

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

| | |
|------------------------|----------------------------|
| Starbucks Corporation, | Case Nos. 03-CA-285671, |
| | 03-CA-290555, 03-CA-291157 |
| Employer, | 03-CA-291196, 03-CA-291197 |
| | 03-CA-291199, 03-CA-291202 |
| and | 03-CA-291377, 3-CA-291378 |
| | 03-CA-291379, 03-CA-291381 |
| Workers United, | 03-CA-291386, 03-CA-291395 |
| | 03-CA-291399, 03-CA-291408 |
| Charging Party. | 03-CA-291412, 03-CA-291416 |
| | 03-CA-291418, 03-CA-291423 |
| | 03-CA-291431, 03-CA-291434 |
| | 03-CA-291725, 03-CA-292284 |
| | 03-CA-293362, 03-CA-293469 |
| | 03-CA-293489, 03-CA-293528 |
| | 03-CA-294336, 03-CA-293546 |
| | 03-CA-294341, 03-CA-294303 |
| | 03-CA-206200 |

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

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| <p>In the Matter of:</p> <p>STARBUCKS CORPORATION,</p> <p style="text-align: right;">Employer,</p> <p>and</p> <p>WORKERS UNITED,</p> <p style="text-align: right;">CHARGING PARTY.</p> | <p>Case Nos. 03-CA-285671,</p> <p>03-CA-290555, 03-CA-291157</p> <p>03-CA-291196, 03-CA-291197</p> <p>03-CA-291199, 03-CA-291202</p> <p>03-CA-291377, 3-CA-291378</p> <p>03-CA-291379, 03-CA-291381</p> <p>03-CA-291386, 03-CA-291395</p> <p>03-CA-291399, 03-CA-291408</p> <p>03-CA-291412, 03-CA-291416</p> <p>03-CA-291418, 03-CA-291423</p> <p>03-CA-291431, 03-CA-291434</p> <p>03-CA-291725, 03-CA-292284</p> <p>03-CA-293362, 03-CA-293469</p> <p>03-CA-293489, 03-CA-293528</p> <p>03-CA-294336, 03-CA-293546</p> <p>03-CA-294341, 03-CA-294303</p> <p>03-CA-206200</p> |
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The above-entitled matter came on for hearing, pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the National Labor Relations Board, Region 3, Robert H. Jackson United States Courthouse, Wyoming (5E) Courtroom, 2 Niagara Square, Buffalo, New York 14202, on **Monday, July 11, 2022**, at **1:06 p.m.**

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Rejected

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GC-14 through 24

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Respondent:

R-1 through 24

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Not Admitted

R-25 through 27

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Not Admitted

R-28

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1 P R O C E E D I N G S

2 JUDGE ROSAS: All right. This is a proceeding before the
3 National Labor Relations Board Division of Judges. I am
4 Administrative Law Judge Michael A. Rosas. This is the matter
5 of Starbucks Corporation and Workers United, and there are, if
6 I remember correctly, 30 cases in total, but they're led by the
7 index case 03-CA-285671, and there is a representation case
8 with the same parties with the case number 03-RC-282127.

9 All right, at this time, counsel state your appearances,
10 General Counsel.

11 MS. CACACCIO: My name is Jessica Cacaccio, the last name
12 spelled C-A-C-A-C-C-I-O, one of the counsel to the General
13 Counsel.

14 MS. STANLEY: Alicia Stanley for the General Counsel.

15 JUDGE ROSAS: Okay. Charging Party, and name of firm?

16 MR. HAYES: Ian Hayes, Hayes Dolce, Buffalo, New York for
17 Workers United, the Charging Party.

18 JUDGE ROSAS: Respondent?

19 MS. POLITO: Good afternoon, Your Honor. Jacqueline
20 Phipps Polito on behalf of Respondent Starbucks with the law
21 firm of Little Mendelson, and as I mentioned in one of our
22 proceedings, I do have a hearing loss in one ear, so if I would
23 be kind enough to ask everyone to talk into the microphone that
24 would help me from asking everyone to talk into the microphone,
25 so thank you for that --

1 JUDGE ROSAS: How --

2 MS. POLITO: Okay.

3 JUDGE ROSAS: -- are we doing so far?

4 MS. POLITO: I -- I have a little trouble hearing some of
5 the dialogue.

6 JUDGE ROSAS: Okay. Just, you know, raise it, you know,
7 when it happens, okay?

8 MS. POLITO: Thank you, Judge.

9 MR. BALSAM: Good afternoon, Your Honor. Ethan Balsam on
10 behalf of Starbucks Corporation with the law firm of Littler
11 Mendelson.

12 MR. WHALEN: Good afternoon, Your Honor. William Whelan
13 on behalf of Starbucks Corporation with the law firm of Littler
14 Mendelson.

15 JUDGE ROSAS: Location?

16 MR. WHALEN: Washing --

17 MS. POLITO: Rochest --

18 MR. WHALEN: -- sorry.

19 MS. POLITO: -- sorry. Ro -- Rochester, New York.

20 MR. WHALEN: Washington, D.C.

21 MR. BALSAM: Chicago, Illinois.

22 JUDGE ROSAS: Okay. All right. Counsel for the General
23 Counsel, before we proceed, you distributed the formal papers.
24 Can you identify them for the record?

25 MS. CACACCIO: Yes, Your Honor. I'm seeking admission of

1 the formal papers which were previously emailed out by the
2 General Counsel as a PDF but are now also available today in
3 paper copies pre-marked as GC Exhibits 1(a) through 1(cccc),
4 that's four c's, with 1(cccc) being the index and description
5 of this formal document. Today's version is different from the
6 PDF in that it also includes Respondent's answer to the third
7 amended complaint.

8 JUDGE ROSAS: Charging Party, you've had an opportunity to
9 review all the formal papers?

10 MR. HAYES: Yes, sir.

11 JUDGE ROSAS: All right, and they -- they appear to be
12 what they are represented by the General Counsel to be?

13 MR. HAYES: Yes, sir.

14 JUDGE ROSAS: Respondent?

15 MS. POLITO: We have reviewed those, Your Honor.

16 JUDGE ROSAS: Okay. General Counsel's Exhibit 1(a)
17 through 1(cccc) is received in evidence.

18 **(General Counsel Exhibit Numbers 1(a) through 1(cccc) Received**
19 **into Evidence)**

20 JUDGE ROSAS: Okay. At this time, I'm going to issue a
21 sequestration order as we've discussed in this matter. All
22 right, at this point, potential witnesses, except for
23 designated party representatives, will be excluded from the
24 hearing until such time as they are called to testify. Party
25 representatives may be present at all times except when

1 witnesses on their side are giving testimony regarding events
2 that the designated individuals are expected to testify about.

3 The order prohibits all witnesses and counsel from
4 discussing with other witnesses or potential witnesses the
5 testimony that they have already given or will give. Counsel
6 may, however, for purposes of preparing witnesses for rebuttal,
7 at that point inform witnesses about the testimony of opposing
8 party witnesses. Counsel are expected to police the rule and
9 bring any issues related to it to my attention.

10 Anybody have any questions at this point?

11 MR. HAYES: Your Honor, I -- I have a question about that.
12 So we're going to have dozens of witnesses who are, you know,
13 active Union supporters, Union activists, who are appearing as
14 the General Counsel's witnesses, and you know, the -- the Union
15 represents many of them as members and were in close contact
16 with the rest of them just as supporters. I -- I'm sure you've
17 seen, Your Honor, the -- the -- the scope of this complaint is
18 huge, both over time and in terms of the categories of conduct
19 that it deals with, and those subjects are often the subject of
20 conversation and whatever discussion and organizing among Union
21 members and Union supporters, and that's, to be frank, a big
22 part of the lives of many of the workers, and it has been for
23 the last ten months, so what I -- maybe this is being overly
24 cautious to even ask this question, but I'd like some -- some
25 guidance since I'll be the one policing it for many of those

1 witnesses about, I guess, the specific parameters.

2 I -- I think it's obvious that a -- a witness or potential
3 witness can't say I testified about this and I will be
4 testifying about that. That's -- nobody's going to have a
5 disagreement about that, but what I am wondering is whether the
6 sequestration order extends to the entire subject matter of
7 each respective witness' testimony because if it does, I think
8 the Union has to oppose the -- the order because that is not
9 manageable. That would radically limit many Union's members
10 and activists in their ability to participate in -- in daily
11 life until the end of this hearing, which would be several
12 months from now.

13 JUDGE ROSAS: All right.

14 MR. HAYES: So --

15 JUDGE ROSAS: Well, Counsel, you know, that -- that --
16 that is an ethical point that you correctly raise,
17 appropriately so. It's realistic. It's -- it's a -- a problem
18 that you have that you'll have to really work hard at policing,
19 but the sequestration order will -- will stand, and
20 witnesses -- potential witnesses need to understand what we're
21 talking about here. I mean, that's -- that's your job to let
22 them know that, when they get called, they're probably going to
23 be asked who, if anyone, they've spoken to about this case, and
24 if it's a matter of talking about, you know, on a given day
25 people that are working alongside each other, you know,

1 something like, you know, how was your day, well, you know, I
2 was somewhere or I went shopping, and you know, I was called to
3 testify as a witness the other day, or something like that.

4 You know, we'll have to assess any -- any issues, any
5 potential problems that may come up, which I'm sure they'll
6 come up either on direct examination, if they're asked, or I'm
7 sure on cross-examination. I mean, it's -- it's everybody's
8 job to do the best they possibly can to ensure that the
9 testimony that I'm getting has integrity to it, okay, is --
10 is -- is -- is testimony that I would need to -- in those kinds
11 of instances where it comes up as an issue, it's an issue
12 because it's something that I may have to make a judgment about
13 the credibility of the witness because of something that's
14 disputed, whether it was the time of the day when something
15 occurred or whether somebody said something, whatever it is. I
16 mean, these are the tools that we have to try to make these
17 decisions when the time comes. I mean, it's -- sometimes it's
18 not an easy one to make, and this is a very important rule, so
19 you know, I -- I know you've -- you've got a challenge ahead.
20 The -- the landscape that you're describing is one that you're
21 going to have to work hard at making sure that your clients all
22 understand what their responsibilities are, okay?

23 MR. HAYES: So Your Honor, just so I understand, I --

24 JUDGE ROSAS: Testimony. Testimony. Don't talk about
25 your testimony. And when a jury comes home at night in a jury

1 trial, you know, they're told by the judge not to discuss the
2 case, but you know, do they in some instances possibly tell the
3 witnesses -- tell their family what they had for lunch when
4 they were there or how the temperature in the courtroom was,
5 whether they're hungry, whether they had a hard day. I mean,
6 you know, it -- it -- it all depends, okay, on -- on just
7 everyday conversational talk. People work with each other, and
8 I understand that, but again, they're going to have to
9 understand the responsibility that they have.

10 MR. HAYES: So Your Honor, I -- I appreciate what you just
11 said. I'm -- I'm trying to draw the distinction between
12 talking about testimony and talking about the subject matter of
13 the entire case because the subject matter of the entire case
14 is in a major way the lives of most of these witnesses for the
15 better part of the last year, including the terminations and
16 the disruptions at stores, et cetera.

17 If they're not able to talk about those things -- not --
18 not talking about this is what I testified about, this is what
19 I did testify about. Leaving aside, you know, explicit
20 mentions of the -- this hearing, if they're not able to talk
21 about that subject matter, of course, I'll do my best, but I
22 don't know how to police that. That's imposing a limitation
23 on -- you know, just sort of a common-sense limitation on the
24 way these workers have been living, but it's also a limitation
25 on their ev -- you know, day-to-day exercise of their rights

1 under the Act, so --

2 JUDGE ROSAS: So it's -- it's really pretty simple as a
3 rule, which is you can't discuss your testimony with anyone.
4 You can't tell them what we've said. You can't tell someone
5 else -- you can't talk to someone else who's testified about
6 their testimony. It -- it's pretty simple. I mean, if -- if
7 they're talking about, you know, their employer, their employer
8 is a matter of fact. I -- I -- I can't advise you further,
9 but --

10 MR. HAYES: I understand, Your Honor.

11 JUDGE ROSAS: -- we have to apply the rules. We have to
12 apply the rules as best we can.

13 MR. HAYES: That -- that's helpful. I understand, Your
14 Honor. Thank you.

15 JUDGE ROSAS: Anybody else want to add anything?

16 MS. POLITO: No, Your Honor. Thank you.

17 UNIDENTIFIED SPEAKER: No, Your Honor.

18 JUDGE ROSAS: Okay. How -- how is that coming across?
19 Everything good?

20 MS. POLITO: Yes, thank you --

21 JUDGE ROSAS: Okay.

22 MS. POLITO: -- Judge.

23 JUDGE ROSAS: All right. All right. So we've gotten the
24 sequestration order. I believe we have the full papers in
25 place.

1 Respondent, you have submissions that you want to raise at
2 this time?

3 MS. POLITO: Yes, Your Honor. Do you mind if I stand at
4 the podium?

5 JUDGE ROSAS: Please.

6 MS. POLITO: Good afternoon, Your Honor. At this point,
7 the Respondent would like to enter into the record the petition
8 to revoke. There's a -- we're moving into those documents, and
9 we have a -- a copy for the clerk, but we'd like to submit into
10 the record the Board's subpoena, B-1, 1(g), 5(w), 8(jf) which
11 was served on June 6, 2022, the petition to revoke which was
12 served on June 13th, the opposition to the petition to revoke
13 which was served on June 30th, the reply which was served on
14 July 6th, a further reply which was served on July 7th, and the
15 order that was issued by Your Honor on July 8th.

16 We'd also like to submit the Union's subpoena, which is
17 B-1-1(gaweo9), which was served on June 21st, 2022, the
18 petition to revoke which was served on July 1st, the opposition
19 which was served on July 7th, and the order of this judge which
20 was served on July 9th.

21 Finally, with respect to the subpoenas, Judge, we'd like
22 to offer into the record Board subpoena B(1)-1(gdenil), served
23 on June 28, 2022, the petition to revoke served on July 6th,
24 2022, the opposition served on July 8th, and the order dated
25 July 9th.

1 And Judge, I've got a copy for the court reporter or for
2 Your Honor. I did not make a copies for opposing parties
3 because they're so voluminous, but I've got the two extra if
4 anyone likes a copy.

5 JUDGE ROSAS: You -- you're referring to the -- to the
6 three orders for which -- that related to petitions to revoke?

7 MS. POLITO: Correct, Judge.

8 JUDGE ROSAS: Against the Respondent?

9 MS. POLITO: Correct, Judge.

10 JUDGE ROSAS: Wasn't the -- wasn't the last one on July 10
11 issued the order?

12 MS. POLITO: So on July 10th, I have a reference to that
13 in my notes, we had filed a motion, I think, for
14 reconsideration.

15 MS. CACACCIO: Your Honor, I --

16 MS. POLITO: No, no, Judge. I think this -- because I
17 think the July 10th order related to the 10J and not the
18 subpoenas, if I'm correct.

19 MS. CACACCIO: No.

20 JUDGE ROSAS: Let's go -- let's go off the record.

21 (Off the record at 1:21 p.m.)

22 JUDGE ROSAS: All right, so Counsel, again, this could be
23 subject to correction, but it is my recollection that the third
24 order on petitions to revoke was issued yesterday, July 10th --

25 MS. POLITO: That is --

1 JUDGE ROSAS: -- 2022.

2 MS. POLITO: -- that is correct, Judge. And that was
3 relating to a subpoena duces tecum B-1-1(gawe09). That's
4 correct, Your Honor. Thank you. We'd like those to be in the
5 record.

6 JUDGE ROSAS: What have you designated them as?

7 MS. POLITO: I -- I -- I haven't just designated them,
8 Judge, and I don't know if we -- if you -- we -- if we do -- do
9 different numbers, or letters but --

10 JUDGE ROSAS: Everything will be R-1 and so on for the
11 Respondent. Charging Party will be CP-1. To the extent that
12 they have anything that's distinguishable for the
13 representation case, in those limited instances, you can do
14 R -- what is it -- U-1, and the Respondent can do ER-1. I
15 mean, that's how the parties oftentimes like to do it, but it's
16 not going to confuse anybody greatly if you just keep it with
17 the R, CP, and GC designations.

18 MS. POLITO: So like, my question for Your Honor, the
19 volume of those documents that I referred to are 24, so then I
20 would move Respondent's 1 through 24 into the record, 24 being
21 Starbucks' motion for reconsideration.

22 MS. CACACCIO: Your Honor, before we can submit comment,
23 we've got to be able to see it, and there's no copy for us to
24 be able to --

25 JUDGE ROSAS: Or -- okay, so that'll be reviewed by the



1 General Counsel and the Charging Party, and they'll provide me
2 with their positions on that offer, essentially authenticate
3 what you're referring to.

4 MS. POLITO: And in addition, Judge, Respondent would note
5 that we filed a motion for a bill of particulars on June 10th,
6 which was opposed on June 14th and was denied by Your Honor on
7 June 20th, and we ask that those documents be placed into the
8 record as R-24 through -- 25 through 27, and I understand from
9 the General Counsel's objection that she'd like to see a copy
10 of those records as well.

11 JUDGE ROSAS: That's -- the order and the motion and the
12 opposition, 20 and -- and what else?

13 MS. POLITO: The motion for a bill of particulars, the
14 opposition filed by the Board, and the order filed by Your
15 Honor.

16 JUDGE ROSAS: So it's 24 through 27? No, 25 --

17 MS. POLITO: 25 -- 25 --

18 JUDGE ROSAS: -- 25.

19 MS. POLITO: -- to 27, Your Honor.

20 JUDGE ROSAS: Got it. Okay. All right.

21 MS. POLITO: We'd also like to note for the record, Your
22 Honor, that you issued an order on July 10th which states that
23 the Board may not solicit or introduce any 10(j) evidence into
24 the record until such time as the Board reviews the appeal.
25 That order was issued by email, and we'd like that entered into

1 the record as Respondent 28.

2 JUDGE ROSAS: What was the day on that, again?

3 MS. POLITO: July 10th.

4 JUDGE ROSAS: My order on the 10(j)?

5 MS. POLITO: Correct.

6 JUDGE ROSAS: Let's go off the record.

7 (Off the record at 1:26 p.m.)

8 JUDGE ROSAS: All right, Counsel, so you've clarified this
9 is an email from me to the parties yesterday, July 10, 2022,
10 relating to just improper evidence in connection with the 10(j)
11 proceeding being offered in this case. Okay. That will be
12 Respondent's 28 --

13 MS. POLITO: Correct, Judge.

14 JUDGE ROSAS: -- for ID. Okay?

15 **(Respondent Exhibit Number 28 Received into Evidence)**

16 MS. POLITO: Next, Judge, I'd like to request that the
17 court sever 03-RC-28217 from this proceeding. As this ALJ is
18 aware, the case -- the third amended complaint asserts 32
19 independent charges against Respondent. Each charge has a
20 number of allegations which has resulted in a request for
21 thousands of documents as addressed in various petitions to
22 revoke that we just discussed earlier. We ask that Your Honor
23 exercise his discretion and grant Respondent's application
24 involving a highly complex third amended complaint which
25 intertwines the representation case improperly. It would be

1 more efficient for this Court and to all parties involved in a
2 representation case proceeded separately and independently from
3 the remaining 32 charges. To move forward, we will build a
4 confusing record, moreover severing the representation case
5 could result in a faster final resolution of the representation
6 case since the underlying charges, again involving 32 succinct
7 charges each with a number of subparts and expected to go
8 through the end of October before this hearing is even
9 concluded. So for that reason, Judge, we'd ask that this Court
10 sever 03-RC-282127 from the third amended complaint.

11 MS. CACACCIO: Your Honor, may I be heard? That -- the RC
12 case number was included in the second amended complaint. It's
13 not unique to the third amended complaint, so to the extent
14 this is something that should've been raised, it should've at a
15 minimum been raised for your motions in limine request by
16 (indiscernible). This is the first that General Counsel is
17 hearing of it and of course we oppose the -- the issues are
18 overlapping, they're timed in relation to every other
19 allegation in the charge, and given -- given the -- the
20 extensive nature of the state that it is, another 30
21 allegations aren't going to change the timeline.

22 JUDGE ROSAS: Another how many?

23 MS. CACACCIO: She has it to 30. I don't think it's that
24 many, but that's what Respondent has just reported to the
25 Court.

1 JUDGE ROSAS: Charging Party, you want to address --

2 MR. HAYES: Your Honor, the -- the Charging Party opposes
3 the request for the same reasons. It's all part of the same
4 in -- inextricably intertwined series of facts, and the
5 objections in this case and -- and the RC case were filed last
6 December. If they were going to be resolved, they should've
7 been resolved much earlier. We believe the Region properly
8 included them in the second consolidated complaint.

9 JUDGE ROSAS: All right. We had discussions early on, if
10 I recall, regarding the order of the RC case and proof in the
11 RC case to the extent that there would be anything separate and
12 unique to just the RC proceeding; is that correct?

13 MS. CACACCIO: Yes, Your Honor.

14 JUDGE ROSAS: So my practice has been in previous cases of
15 this sort where you have CA and RC cases combined that where
16 there is evidence that is common to both proceedings,
17 obviously, when witnesses are called, counsel, to the extent
18 that -- well, if it's -- if it's evidence that serves the CA,
19 there's no explanation, but when you have a witness on the
20 stand who has, separate and distinct from the CA case,
21 testimony to offer relating to the RC case, it is -- it is
22 something that I typically consider, and failing any convincing
23 argument from the Respondent, generally, the concept of
24 judicial economy, especially in an instance where it's been
25 referred to me by the Regional Director for a combined

1 adjudication, you know, again, it -- it -- you know, it --
2 it -- I'll hear -- I'll hear oral arguments, but -- but
3 generally, you know, this favors judicial economy to proceed
4 jointly on -- on -- on all ends.

5 MS. POLITO: Judge, if I may --

6 JUDGE ROSAS: Go ahead.

7 MS. POLITO: -- respond? Sticking on the notion of
8 judicial economy, the allegations at Camp Road are discrete
9 allegations alleging unfair labor practice violations. Those
10 issues can be tried separate and apart from the remaining 32
11 charges that are set forth in the complaint, and the charges
12 are not intertwined. Allegations at Camp Road versus distinct
13 allegations the testimony of what happened there that reflect
14 that both partners not what happened in other stores, and so
15 it -- for judicial economy purposes, you probably could do
16 those our representation case within a matter of weeks and
17 bring that to a close rather than combining it with these 32
18 other charges across the market, which is going to last through
19 October and potentially into next year, so for judicial economy
20 and for making the record clear focused on the distinct claims
21 relating to the Camp Road store, it would organize the case in
22 a much more comfortable manner if we sever that representation
23 case from the remaining 32 charges.

24 MS. CACACCIO: Your Honor, may I be heard?

25 JUDGE ROSAS: General Counsel, are there unfair labor

1 practices that are alleged relating to this facility that
2 Counsel referred to?

3 MS. CACACCIO: Yes, Your Honor, and there are allegations
4 in this complaint that span all the Buffalo stores, including
5 that at -- that at Camp Road, so you can't sever that case from
6 the others. You just can't. The evidence is a related
7 enterprise. It's all related, Judge. You --

8 JUDGE ROSAS: Okay.

9 MS. CACACCIO: -- can't pull out one store -- you can't
10 even pull out just the RC because that's not the only Camp Road
11 allegation, so it's not possible.

12 MR. HAYES: That's the Charging Party's position, Your
13 Honor.

14 JUDGE ROSAS: Do you want a last stab at this?

15 MS. POLITO: No, Judge, I'd like to just note our pattern
16 for the record and our request, and if Your Honor is declining
17 that motion, it just ask that we -- we will consider whether or
18 not we need to file an immediate appeal of that decision.

19 JUDGE ROSAS: That motion is denied.

20 MS. POLITO: Okay. Thank you, Judge.

21 JUDGE ROSAS: I -- before -- on the grounds of what I
22 believe is judicial economy, and the fact that the General
23 Counsel and Charging Party represent that there will be
24 testimony by witnesses regarding unfair labor practices; is
25 that correct --

1 MS. CACACCIO: Yes, Your Honor.

2 JUDGE ROSAS: -- in the CA case or cases that --

3 MS. CACACCIO: It's case numbers, at a minimum, 03-CA-
4 291157, which was specific to Camp Road allegations, as well as
5 the 03-CA-285671, which is the Buffalo-wide allegation.

6 JUDGE ROSAS: And are these witnesses that will be
7 testifying to both evidence that you believe would support the
8 unfair labor practice allegations and support the objections?
9 And I'm referring to individuals --

10 MS. CACACCIO: Yes, Your Honor.

11 JUDGE ROSAS: -- as opposed to some individuals being
12 called in to testify regarding unfair labor practices allegedly
13 occurring at that facility and other witnesses being called in
14 to testify just to objections?

15 MS. CACACCIO: Yes, Your Honor. They're -- they're
16 intertwined; they're the same -- they're one and the same.

17 JUDGE ROSAS: All right. The objection is overruled for
18 those purposes.

19 MS. POLITO: Judge, Respondent respectfully states that we
20 intend on appealing that decision to the Board. We're seeking
21 written special permission to appeal, and finally, Judge, in
22 light of all the foregoing, the outstanding discovery requests,
23 the petitions to revoke, Respondent moves for a continuance
24 before the commencement of this hearing and asks that the Court
25 exercise discretion and grant the continuance until such time

1 as a decision is rendered on the motion to reconsider or at
2 such time that the Board -- our understanding from this
3 morning's filing that every day that the judge knows and I
4 apologize I got some of the dates confused because every day
5 there's a new filing -- or multiple filings and orders, and
6 this morning there was another filing made. And it seems
7 inappropriate to serve a case with this magnitude when there
8 are outstanding requests to the Board with respect to the
9 evidence and proof to be heard at this hearing as well as
10 outstanding requests with respect to the evidence. Part of our
11 request was attorney appointment under special management and
12 that's still outstanding, and we think that a hearing would run
13 much smoother if all the issues that I just addressed were
14 resolved prior to commencement of the hearing.

15 JUDGE ROSAS: Okay.

16 MS. CACACCIO: It probably goes without saying that we
17 oppose that, Your Honor. This is just -- it's another attempt
18 at delay. Those motions that Respondent mentioned were -- have
19 been done. They had five weeks at a minimum to consider the
20 majority of our subpoena requests. We, to date, have received
21 nothing from Respondent in that regard. Even as the hearing
22 opens, we've gotten nothing so far. It's inappropriate to
23 delay this proceeding, and we oppose it.

24 MR. HAYES: The Charging Party opposes for the same
25 reasons. We've waited ten months to be here. We should start

1 today.

2 JUDGE ROSAS: Well, Counsel, again, the -- that motion
3 is -- is denied. It is not unusual in many of these
4 proceedings for subpoenaed material issues related thereto to
5 carry over into the commencement of the hearing. As I
6 indicated to counsel in our pre-hearing conference, you -- you
7 all have your rights. I expect you to tenaciously and
8 courteously advocate for your clients throughout this
9 proceeding, but at the same time, we will proceed in a way that
10 seeks to both comply with the intention of the National Labor
11 Relations Act, which is to essentially proceed with
12 expeditious -- as expeditious a proceeding as possible, and at
13 the same time, afford you all of your rights. There is, as we
14 know, no discovery in these proceedings, but -- but that is
15 sort of a -- almost a misnomer because the parties are entitled
16 to production of materials from each other under the rules, and
17 rule 26 of the Federal Rules of Civil Procedure governs, as --
18 as -- as much as possible, but not always, but as practically
19 as possible these proceedings.

20 So we're going to do the best we can, and what my
21 experience has told me over -- over the years is that, as cases
22 start to move, a lot of these -- a lot of these issues tend to
23 get worked out or they become a lot more clear in my mind, as
24 the one who has to understand what the story is and make a
25 final decision as to what that story was and where it's going

1 to end up. So we're going to proceed. That motion is denied.

2 MS. POLITO: Judge, if I just may add that Respondent has
3 no intent to delay. In fact, our (b) (6), (b) (7)(C)

4 [REDACTED] and we did not request an extension of
5 this hearing today. The reason that we requested the
6 continuation is specifically because of all the issues that I
7 fronted to Your Honor relating to the subpoenas, the motions,
8 the applications pending with the Board and the limitations on
9 evidence, as well as our request to sever the representation
10 case, so I believe that Respondent has a fair and equitable
11 request for a continuance in light of those things, and I want
12 the record to be clear there was no intent to delay. We just
13 heard the answer for the third amended complaint today, and we
14 are -- we are here and we do not seek to delay this
15 proceeding --

16 JUDGE ROSAS: Well, let me just -- one --

17 MS. POLITO: -- uh --

18 JUDGE ROSAS: -- one last comment that -- that I will make
19 and that is to reiterate what I say my very first pre-hearing
20 conference with the parties, and that is that to the extent
21 that it's possible to work together before a hearing goes
22 forward ends up being more convenient for everybody as a rule.
23 It generally will just work out that way. I will proceed with
24 this case, open the record today, and we will see where the
25 chips will fall, but you know, we're going to be calling

1 witnesses, and I'm going to issuing rulings, and y'all will
2 respond accordingly, and we'll see where it goes from there.

3 MS. POLITO: Thank you, Judge.

4 JUDGE ROSAS: All right? Okay. Is there anything else?

5 MS. CACACCIO: Yes, Your Honor. Per our pre-trial
6 discussions, I'd like to have formally on the record the
7 following stipulations.

8 Tori Clow held the position of store manager PLA from May
9 to September 2021 and a retail talent acquisition PLA or
10 recruiter from September 2021 to the present, and that Tori
11 Clow is a section 2(11) supervisor under the Act.

12 Mallori Coulombe held the position of regional operations
13 coach from April to November 2021 and the position of director
14 regional operations retail from November 21st -- sorry -- from
15 November 2021 to the present, and that Mallori Coulombe is a
16 section 2(11) supervisor under the Act.

17 Joanne Hernandez held the position of director regional
18 operations retail from June to September 2021, district manager
19 licensed from September 2021 to February 2022, and director of
20 regional operations, licensed, from February 2022 to present,
21 and that Joanne Hernandez is a section 2(11) supervisor under
22 the Act.

23 Melanie Joy held the position of district manager licensed
24 from April 2021 to January 2022, and partner resources manager
25 PLA from January 2022 to present and that Melanie Joy is a

1 section 2(11) supervisor under the Act.

2 Marsh King held the position of district manager retail
3 from April 2021 to January 2022 and the regional operations
4 coach from January 2022 to present and that Marsh King is a
5 2(11) supervisor under the Act.

6 Lori Ruffin held the position of store manager PLA from
7 May 2021 to September 2021 and retail talent acquisition PLA
8 from September 2021 to present and that Lori Ruffin is a
9 section 2(11) supervisor under the Act.

10 Brittany Sanders held the position of district manager
11 retail from September 2021 to present and that Brittany Sanders
12 is a section 2(11) supervisor under the Act.

13 Alyssa Scheida held the position of director of regional
14 operations retail from April 2021 to present and that Alyssa
15 Scheida is a section 2(11) supervisor under the Act.

16 Gina Sterling held the position of director of regional
17 operations retail from April 2021 to present and that Gina
18 Sterling is a section 2(11) supervisor under the Act.

19 Chris Stewart held the position of partner resources
20 manager from April 2021 to April 2022 and director of partner
21 resources from April 2022 to present and that Chris Stewart is
22 a section 2(11) supervisor under the Act.

23 And finally, Ashlyn Tehoke held the position of shift
24 supervisor from March to October 2021 and assistant store
25 manager from October 2021 to present and that Ashlyn Tehoke has

1 been a section 2(11) supervisor under the Act since she began
2 her role of assistant store manager in October of 2021.

3 Those are the stipulations.

4 JUDGE ROSAS: Is that so stipulated?

5 MR. BALSAM: I want to sit down, Your Honor. It's a lot
6 easier.

7 JUDGE ROSAS: Okay.

8 MR. BALSAM: Those stipulations were discussed with the
9 General Counsel on the condition that Starbucks was not going
10 to be required to produce documents in connection with the
11 subpoenas. It's unclear to me at this point in time whether or
12 not that agreement is in place. To the extent that the General
13 Counsel is withdrawing those requests for documents concerning
14 those individuals --

15 MS. CACACCIO: That --

16 MR. BALSAM: -- Starbucks will, in fact, stipulate to what
17 was just said.

18 MS. CACACCIO: That was the response to this -- to the
19 motion.

20 MS. POLITO: Judge, that's not the full response. We
21 specifically say in our response that --

22 MS. CACACCIO: No, I'm -- I'm agreeing with you. I'm
23 saying yes. I'm saying that in our response we accepted your
24 stipulations.

25 MS. POLITO: Okay, so this is the first that we're hearing

1 of this disagreement with respect to the stipulations --

2 MS. CACACCIO: It's in writing.

3 MS. POLITO: -- which is late, so we've made progress. My
4 only hesitation is, in response to our discovery, the subpoena,
5 we did make a suggestion that we would have certain
6 stipulations. I haven't compared what Counsel just indicated
7 with what we said, so I would at least, for the record, would
8 like to know what they both are and at least do the
9 comparison --

10 MS. CACACCIO: Your Honor --

11 MS. POLITO: -- and then if it's accurate, which I'm sure
12 that it is just --

13 JUDGE ROSAS: Subject to con --

14 MS. POLITO: -- (indiscernible) the time, I'd like to --

15 JUDGE ROSAS: Subject to confirmation. You're not calling
16 one of those individuals while Counsel's checking --

17 MS. POLITO: No, Judge.

18 JUDGE ROSAS: -- the --

19 MS. POLITO: No.

20 JUDGE ROSAS: -- you know, so they're -- they're stayed
21 the effort of having to come in so you could establish that
22 they were supervisors or their agents --

23 MS. POLITO: Yes, sir.

24 JUDGE ROSAS: -- okay.

25 MS. CACACCIO: And that was in writing, so it shouldn't be

1 a surprise because we -- we responded to the -- the petition to
2 revoke by saying that, and this was in your order, as well,
3 Judge, so.

4 Next, I'm requesting permission to make an oral amendment
5 to the complaint. Mr. Kellen Montanye recently had a legal
6 name change to Kellen Higgins (phonetic throughout), so the
7 complaint alleges Mr. Higgins as Mr. Montanye, and we'd like to
8 make that correction, so wherever Mr. Cullen Montanye's name
9 appears in the complaint, it should read Mr. Kellen Higgins.

10 JUDGE ROSAS: Counsel, point that I'd like to also make at
11 this point is whenever counsel refer to a change in the
12 pleadings and whenever there's an objection on the basis of
13 relevance, I want counsel to refer me to the decretal paragraph
14 in the complaint that something is relevant.

15 So I find that it saves time sometimes having to excuse
16 witnesses when I'm able to see exactly what the -- what the
17 issue is when it's based on relevance. If counsel can just
18 point me to a particular paragraph so that we don't go through
19 the process of having to excuse the witness or leave the
20 witness there and then the witness gets inadvertently coached,
21 you know, so I just want to make that point. What paragraph is
22 that individual referred to?

23 MS. CACACCIO: Your Honor, this is going to be a challenge
24 in this case given the length of the complaint, but I do --
25 hang on, if you could give me just a second.

1 JUDGE ROSAS: Well, I'm working with --

2 MS. CACACCIO: Mr. Montanye's name first appears in 14(a).

3 JUDGE ROSAS: And -- and we're referring to General
4 Counsel's Exhibit 1(bbbd), right?

5 MS. CACACCIO: Yes, Your Honor, the --

6 JUDGE ROSAS: Okay.

7 MS. CACACCIO: -- third amended complaint.

8 JUDGE ROSAS: 14?

9 MS. CACACCIO: 14(a), 14(b), and then in the wherefore
10 clauses, as well. Wherefore clause (d), D as in David, (p) --

11 JUDGE ROSAS: Hold on one second. I -- I've been
12 referring to the wrong pleading. This is actually the -- the
13 top pleading is the -- the answer.

14 MS. CACACCIO: Right.

15 JUDGE ROSAS: So it's 1(aaaa)?

16 MS. CACACCIO: It's the third amended complaint.

17 MS. STANLEY: Can I see the thing?

18 MR. HAYES: I have 1(ggg).

19 MS. CACACCIO: It's 1(zzz). Oh, that's -- yeah --

20 MS. STANLEY: Yeah.

21 MS. CACACCIO: -- it's the third amended consolidated
22 complaint.

23 MS. POLITO: So Judge, if it's easier, we -- we don't have
24 any objection if there's been a formal name change --

25 MS. CACACCIO: Yeah.

1 MS. POLITO: -- to reflect the correct name. Maybe
2 there's a way that addresses the record if we can to make it
3 easier.

4 JUDGE ROSAS: All right, so -- so that change is reflected
5 in -- in the pleading without objection.

6 MS. CACACCIO: Yes, Your Honor. We'd also like to note
7 for the record that Respondent issued 13 duces tecum subpoenas
8 on individual nonparty witnesses today. We anticipate filing
9 petitions to revoke. Similarly, Respondent filed a duces tecum
10 on me personally today and we again anticipate filing a
11 petition to revoke.

12 JUDGE ROSAS: So it's 14 subpoenas?

13 MS. CACACCIO: Yes, Your Honor.

14 JUDGE ROSAS: Okay.

15 MS. CACACCIO: And we anticipate more forthcoming.

16 JUDGE ROSAS: Okay.

17 MS. CACACCIO: Next, I'd like to read into the record some
18 subpoena requests and responses that were received to those
19 based on papers. For General Counsel's first subpoena requests
20 15, 16, and 31, in its papers, Respondent has indicated that
21 Holly Klein is not employed by Starbucks and thus no subpoena
22 responsive documents would exist to those requests.

23 Similarly, for the General Counsel's first subpoena
24 request, that no employee of Starbucks named David Morales
25 worked in Starbucks Buffalo stores during the relevant time

1 period in the complaint or otherwise had any involvement in the
2 conduct alleged in the complaint.

3 MS. CACACCIO: Can I see the subpoena?

4 In the General Counsel subpoena, we requested documents
5 that describe, relate, or refer to promises of store
6 renovations and converting the store to a drive-thru and mobile
7 ordering store made by Respondent at Respondent's Williamsville
8 Place store on about the following dates for the period covered
9 by the subpoena. That was September 28, 2021, and October
10 2021. Respondent denies the existence of documents responsive
11 to that request.

12 Request 46, we requested documents that describe, relate,
13 or refer to promises of onsite mental health counselors made by
14 Respondent at Respondent's Main Street store in about October
15 2021 for the period covered by the subpoena. Again, Respondent
16 denies the existence of documents responsive to that request.

17 General Counsel requested documents that describe, relate,
18 or refer to promises of seniority or tenure-based wage
19 increases made by Respondent at Respondent's Transit Commons
20 store in about October 2021 for the period covered by the
21 subpoena. Respondent denies that this is a document responsive
22 to that request.

23 Number 48, documents that describe, relate, or refer to
24 promises made by Respondent at Respondent's Elmwood store on
25 October 1st, 2021, for the period covered by the subpoena.

1 Respondent denies the existence of documents responsive to the
2 request.

3 Request 43 -- sorry 53, documents that describe, relate,
4 or refer to a promise of a store renovation made by Respondent
5 at Respondent's Elmwood store in about November 2021 or
6 December 2021 for the period covered by the subpoena.

7 Respondent denies the existence of documents responsive to that
8 request.

9 Number 54, documents that describe, relate, or refer to
10 promises of store expansion and renovation made by Respondent
11 at Respondent's Transit & French store for the period covered
12 by the subpoena. Respondent denies the existence of documents
13 responsive to that request.

14 Number 61, photographs or pictures taken by Respondent at
15 Respondent's Transit Commons facility that show employees or
16 their accessories, including but not limited to pins, buttons,
17 or aprons from April -- from August 1st, 2021, to October 1st,
18 2021. Respondent denies the existence of documents responsive
19 to that request.

20 Number 67, documents that describe, relate, or refer to
21 headset usage or requirements among Respondent's managers,
22 supervisors, or agents in Respondent's Buffalo facilities for
23 the period covered by the subpoena. Respondent denies the
24 existence of documents responsive to that request.

25 Number 69, documents that describe, relate, or refer to



1 Union or labor-related pins, paraphernalia, or clothing worn at
2 Respondent's Buffalo facilities from July 1st, 2021, to
3 present. Respondent denies the existence of documents
4 responsive to that request.

5 And number 109, documents that describe, relate, or refer
6 to the disconnection of the direct telephone line for
7 Respondent's Genesee Street store for the period covered by the
8 subpoena, including but not limited to a disconnection on about
9 December 9th, 2021. Respondent denies the existence of
10 documents to that particular request.

11 In addition, as I briefly mentioned earlier, General
12 Counsel has yet to receive any response to our subpoenas. I
13 understand from pre-trial discussions that -- that I wasn't
14 going to be getting the totality of what I requested, but given
15 that there was at least five weeks between when I issued it and
16 now and Respondent has an obligation to begin at least looking
17 through those records upon the issuance of a subpoena
18 regardless of whether you ruled or -- which you have in this
19 case about that subpoena, I -- I think that we should be
20 entitled to at last some documents at this point, Judge.

21 MR. BALSAM: Sorry, Your Honor. Since the issuance of the
22 subpoena, and we have represented that we are -- we have begun
23 and we are looking for certain documents -- cats -- categories
24 of documents that was reflected in our petition to revoke. As
25 we've mentioned numerous times to both the Court and also the

1 General Counsel, the sheer volume of documents that have been
2 requested will take time to produce, but we have started the
3 process and we can commit to producing those documents by the
4 end of the month, not today, unfortunately, just because of the
5 sheer volume. Along those same lines, Your Honor, in a ca --
6 it was mentioned in our petition to revoke that Your Honor
7 ordered us to produce a privilege log regarding these
8 documents. Again, it would be -- it is impossible to produce a
9 privilege log by July 18th given the fact that there is
10 hundreds if not hundreds of thousands of documents that Your --
11 Your Honor has ordered us to look through, and we cannot commit
12 to producing a privilege log by that deadline.

13 JUDGE ROSAS: Let's see what your written response is
14 tonight to the Respondent's motion.

15 MS. CACACCIO: Yes, Your Honor. Your Honor, what's your
16 preference regarding requesting permission to use the well of
17 the court and approach witnesses?

18 JUDGE ROSAS: To use what?

19 MS. CACACCIO: The well of the court or to approach
20 witnesses?

21 JUDGE ROSAS: You want to use the podium?

22 MS. CACACCIO: Do -- do you like us to ask every time we
23 approach a witness?

24 JUDGE ROSAS: No, no, it's fine, but like I said, you
25 know, we're not getting our steps here, okay, so try to be as

1 efficient as possible with respect to any anticipated exhibits,
2 all right?

3 MS. CACACCIO: Yes, Your Honor. And given the
4 sequestration of witnesses except for party representatives,
5 we'd like on the record who the party representatives are for
6 each side.

7 JUDGE ROSAS: Who do you have?

8 MS. CACACCIO: We don't, Judge.

9 JUDGE ROSAS: Charging Party?

10 MR. HAYES: Judge, the Charging Party has Michelle Eisen
11 as the party representative.

12 JUDGE ROSAS: Okay. Respondent?

13 MS. POLITO: Judge, I -- I apologize. I have to find her
14 full name because we refer to her as "M.K.", and unfortunately,
15 she could not be here today --

16 JUDGE ROSAS: Okay.

17 MS. POLITO: -- but she will be here tomorrow at the
18 proceeding. It's is Kristina M-K-R-U-T-U-M-Y-A-N.

19 JUDGE ROSAS: Okay. And -- and just to reiterate, I think
20 I explained to Counsel, notwithstanding the sequestration rule,
21 what that means is that if a -- a designated representative
22 individual needs to be excused, someone else can take their
23 place, okay, when they're testifying or excluded in those
24 instances, all right? Okay. Anything else?

25 MS. CACACCIO: Just one moment, Your Honor. With that,

1 General Counsel is ready to proceed with opening statements,
2 Your Honor.

3 JUDGE ROSAS: Okay. Go ahead.

4 MS. CACACCIO: Would you like me with my opening
5 statement, Your Honor?

6 JUDGE ROSAS: Yes.

7 MS. CACACCIO: One moment, Your Honor. Cassie Fleischer,
8 Danny Rojas, Min Park, Brian Nuzzo, Nathan Tarnowski, Angel
9 Krempa, Kellen Higgins, what do these people all have in
10 common? They worked for Starbucks, they were pro-Union, and
11 they were fired. These seven employees from five western New
12 York stores were discharged over the course of six weeks in the
13 spring of 2022. These terminations represented a crescendo in
14 Respondent's anti-Union campaign, but this is not where it all
15 began.

16 The evidence will show that on August 23rd, 2021, almost
17 50 baristas from stores throughout Buffalo put their name to a
18 letter to Respondent's then CEO stating their intention to
19 unionize, and in that letter, the employees asked for a
20 partnership, for equal power. They asked for respect, but
21 Respondent refused. Instead, Respondent used these names to
22 form a proverbial hit list of places to target where the Union
23 support was the strongest. Why? You will learn that the
24 Buffalo baristas were the first in the country to make such a
25 pro-Union statement to Respondent, and Respondent reacted with

1 an iron fist to try and nip this campaign in the bud.

2 Terminations were not the only aggressive tactic that
3 Respondent used to try and take back control and stop the Union
4 campaign. During this hearing, you will learn that half of the
5 employees from Respondent's kiosk located inside the Walden
6 Galleria Mall put their name to that August 23rd letter to
7 Respondent's CEO supporting the Union campaign, and you will
8 learn that within weeks, Respondent had permanently closed that
9 location, and that was not the only store that Respondent
10 closed.

11 The evidence will show that, again, a few short weeks
12 after the Union campaign went public and shortly after the
13 Union filed a petition at the Walden and Anderson store,
14 Respondent closed that store to the public and converted it
15 into a tra -- centralized training facility scattering Union
16 supporters across the market. Oh, and centralized training
17 facilities, during this case, you'll learn that centralized
18 training facilities were something that was unheard of in the
19 Buffalo area, well, prior to the Union campaign, of course, and
20 once that store reopened, Respondent converted additional
21 stores into training facilities thereby attempting to remedy
22 grievances and impacting employee pay and working conditions.

23 You will hear testimony about how shortly after the
24 employees' Union -- pro-Union announcement, Respondent
25 mobilized. The evidence will show that dozens of out-of-state

1 managers descended on Buffalo under the guise of helping
2 Buffalo stores. The evidence will show that the out-of-state
3 managers were given a new position, a new title of support
4 manager, a role that was previously unheard of even among the
5 longest-tenured baristas, well, before the campaign. You will
6 hear how these support managers, as well as Respondent store
7 managers, started working at stores around the clock and how
8 employees felt like they were in a fishbowl. You will hear how
9 these managers wore headsets even when their role would have
10 otherwise not required it so that they could listen in on
11 employees' conversations. The testimony will show that
12 managers also interrogated and threatened employees, solicited
13 grievances and promised benefits.

14 Support managers and store managers were not the only
15 officials that swarmed the Buffalo stores after the campaign
16 was announced. Respondent brought high-ranking corporate
17 officials to Buffalo, officials like the president of Starbucks
18 North America, the director of U.S. community engagement, and
19 the senior vice president of U.S. operations, and that they
20 stayed as a presence in the stores for months. The evidence
21 will show that these high-ranking officials repeatedly held
22 meetings they called listening sessions where they solicited
23 grievances and promised benefits. The evidence will also show
24 that these officials had almost never been seen in those stores
25 before the campaign and certainly not for a long time.

1 You will even hear how the president of Starbucks North
2 America, it got boring and started sweeping the store floor.
3 She also took it upon herself to remedy an employee's grievance
4 by resolving a timely schedule posting issue in a store. You
5 will also hear how she told employees that Respondent would not
6 offer additional benefits in a contract with the Union and that
7 employees would lose other benefits if they selected the Union
8 to represent them.

9 You will hear how officials told employees they would lose
10 their great relationship with management, that management would
11 no longer be able to help out on the floor, and that employees
12 would no longer be able to pick up shifts at other stores if
13 they selected a union.

14 Now, with respect to these captive audience meetings,
15 witnesses will testify that in some instances they were told
16 they had to attend meetings or be forced to attend a makeup
17 session. Witnesses will testify that these meetings were put
18 on their schedules and that when stores were closed for these
19 meetings, they would only be paid if they attended, which made
20 these meetings effectively mandatory for baristas living
21 paycheck to paycheck.

22 While Respondent gave with one hand it took away with the
23 other. The evidence will show these benefits included but were
24 not limited to store refreshes, remodels, renovations, and
25 facility improvements. Employees will testify that Respondent

1 doled out a first-of-its-kind seniority-based wage increase
2 across the country which had been a major pro-Union talking
3 point. Witnesses will testify that Respondent began allowing
4 shift supervisors to disable mobile ordering and close cafes,
5 which is something they had been requesting and a perc that
6 Respondent later took away. The evidence will also show that
7 Respondent began offering additional hours to employees and
8 adding more labor per week until Respondent, again, changed its
9 unit avoidance strategy and took away that benefit.

10 Witnesses will testify that in an effort to remedy
11 grievances, Respondent also removed problematic managers while
12 hiring additional employees to resolve staffing concerns. The
13 evidence will show that Reslayant -- Respondent began more
14 strictly enforcing rules, including but not limited to those
15 involving civility, dress code, free food item benefits,
16 attendance and punctuality, and those relating to illness. You
17 will also learn that Respondent created and enforced a new
18 employee minimum availability requirement. The evidence will
19 show that pro-union employees were targeted for discipline
20 based on these new policies.

21 When other methods didn't work, Respondent escalated its
22 tactics. I already told you that you'll hear how over the
23 course of six weeks Respondent fired seven organizers at five
24 stores. But you'll also hear how it even banned one from
25 setting foot in a Starbucks ever again.

1 The evidence will also show that Respondent failed to
2 bargain over the two terminations at the Union represented
3 Transit & French store, and that Respondent failed to bargain
4 before implementing that minimum availability policy that led
5 to the termination of one employee and the constructive
6 discharge of another at its Union-represented Elmwood store.

7 Given Respondent's extensive, aggressive, and unlawful
8 conduct, employees' opinions of the Union campaign were
9 unlawfully manipulated. The General Counsel is seeking a
10 Gissel bargaining order in this case for Respondent's Camp Road
11 store. The bargaining order is warranted due to Respondent's
12 pervasive and severe unfair labor practices which caused Union
13 disaffection and interfered with employees' free choice in
14 their elections.

15 My name is Jessica Cacaccio, and along with my colleague,
16 Alicia Stanley, we are counsel for the General Counsel in this
17 case against Respondent, Starbucks Corporation. And somehow,
18 despite the fact that I've been monologuing to you for about
19 ten minutes straight, these are not even all of the unlawful
20 acts that the General Counsel is alleging Respondent committed.
21 It's just an overview.

22 This case alleges nearly 300 allegations at 22 stores
23 running the gamut of unfair labor practice violations,
24 including those found in Sections 8(a) 1, 3, 4, and 5 of the
25 National Labor Relations Act. At its core, this case is about

1 Respondent's attempt to leverage the power and balance between
2 itself, a multi-billion-dollar company, and its baristas to
3 quash a Union campaign and silence their voices.

4 The National Labor Relations Act codified employees'
5 fundamental and federally-protected right to seek better
6 working conditions and representation without fear of
7 retaliation. But Respondent, with all of its power, thought it
8 was above that law and Respondent should be held accountable.

9 Thank you.

10 JUDGE ROSAS: Charging Party, you can give an opening at
11 this time, you can waive, or you can reserve until it's your
12 turn.

13 MR. HAYES: I'll give an opening now, Your Honor.

14 Your Honor, I'll start by saying the Union believes the
15 record that will be developed in this case will support a
16 finding that Starbucks violated the Act regarding every
17 allegation in the third-amended complaint for the reasons that
18 were just summarized by the GC.

19 Right now I think it's easy for the real core of this case
20 to be lost in discussion of motions, and subpoena issues, and
21 sequestration issues, so I'd just like to take a couple minutes
22 to describe the broader context and what the Union believes
23 this case really means.

24 So as you've heard, Starbucks workers in Buffalo began
25 organizing, and they publicized their campaign last summer.

1 From that moment, Starbucks declared war on its own workforce,
2 and apparently decided to stop at nothing to kill the
3 organizing campaign while it still only existed here in
4 Buffalo.

5 That partially worked and it partially didn't. To the
6 extent the workers persevered, if they were able to, the
7 workers in Buffalo sparked a movement to organize under the
8 Act, and through that NLRB process, that spread throughout the
9 entire company, which has about 9,000 stores and nearly 300,000
10 employees.

11 The record in this case will show that there must have
12 been decisions at the highest levels that the Company would
13 systematically and overtly violate the NLRA and beat its
14 workers into the ground as a deliberate display and in order to
15 send a message to the whole country, then deal with the
16 consequences of those violations sometime later down the line
17 as essentially the cost of doing business. That was apparently
18 the plan.

19 A key aspect to that plan is that Starbucks would make a
20 spectacle of its violations of law and its rage over its own
21 employees trying to have a say in the everyday conditions of
22 their working lives. It would do things so transparently in
23 violation of the Act that were -- would start getting around.
24 So the company temporarily and permanently closed stores they
25 thought were the centers of organizing. So workers would start

1 saying, that's what happens if you try to organize. That's
2 what happens when you try to enforce your rights under the law.

3 They flooded stores with managers from across the country
4 and multimillionaire executives to spy on and terrorize the
5 workers in all the stores throughout the Buffalo area. And
6 while the workers tried to give those people a wide birth, it's
7 difficult to do that when you're confined behind a counter or
8 in a store lobby, which is a very physically small space.
9 Again, the Company did this so that workers would say, if you
10 unionize or you try to unionize, you'll be overwhelmed by
11 management and you'll never get a moment's rest.

12 The Company fired workers who were publicly supporters and
13 leaders, and who put themselves out there in national media so
14 the message that this is what happens when you unionize would
15 also be noted. Based on the record that will be developed
16 here, there will be no other conclusion to draw that this was
17 the intent all along.

18 So as the campaign to unionize Starbucks moved outside
19 Buffalo, the Company's response did too. And nothing so far
20 has stopped it from violating the law hundreds of times over.
21 The Union filing dozens then hundreds of ULP charges hasn't
22 stopped it. Merit determinations by regional offices across
23 the company on hundreds of allegations hasn't stopped it. In
24 fact, throughout Starbucks has displayed open contempt for the
25 Act and for the agency that's trying to enforce it.

1 Public outcry hasn't stopped it. This is one of the
2 largest employers in the U.S. And for all intents and
3 purposes, they have infinite money to spend on this project,
4 and they're not going to stop on their own.

5 So the question is what does the NLRA mean in the face of
6 a situation like this? Can it lead to consequences -- real
7 consequences that are proportionate to the Company's
8 violations, or will this just, at the end of the day, be the
9 cost of doing business for the Company? Because that question
10 is key, Your Honor, the Union will be seeking far-reaching,
11 extraordinary remedies to match the extraordinary violations
12 that the Company has carried out here.

13 I realize the question I'm raising about the very nature
14 of the act itself is grandiose, but that's because this entire
15 situation is grand. Starbucks Corporation sent its president
16 of North America to live in Buffalo, New York for about half a
17 year. The current CEO of Starbucks Corporation was apparently
18 put in that position because the Company thought he could
19 answer what it viewed as the problem of its workers trying to
20 unionize.

21 And then beyond that, there is a workers' movement in the
22 United States right now that hasn't been seen in over a
23 century, and Starbucks workers from Buffalo and elsewhere have
24 helped inspire that movement and are at the center of it,
25 despite all of the violence the Company has done to those

1 workers exercising their rights over the last year.

2 So as uncomfortable as it might be to hear, I think
3 everyone in this case is speaking into history. And this case
4 is asking an important question, the answer to which is not
5 going to go unnoticed. Again, that question is, what does the
6 Act mean in the 21st century when a giant employer has infinite
7 resources, has no hesitation in breaking the law, and it views
8 its employees exercising their rights under the law as a
9 crisis? What can the Act do about that? The significance of
10 that question is why what happens here matters.

11 Thank you.

12 JUDGE ROSAS: Respondent, you can give an opening now,
13 reserve, or waive.

14 MS. POLITO: Thank you, Your Honor. We're going to
15 reserve until our case-in-chief.

16 JUDGE ROSAS: Okay. All right. Let's take five minutes.
17 We'll go off the record and then we'll start with your first
18 witness, okay?

19 (Off the record at 2:15 p.m.)

20 JUDGE ROSAS: Okay. We're on the record.
21 Counsel, call your first witness.

22 MS. CACACCIO: Your Honor, counsel for the General Counsel
23 calls Michelle Eisen to the stand.
24 Whereupon,

25 **MICHELLE EISEN**



1 having been duly sworn, was called as a witness herein and was
2 examined and testified as follows:

3 JUDGE ROSAS: All right. State and spell your name and
4 provide us with an address, business is fine.

5 THE WITNESS: Michelle Eisen, M-I-C-H-E-L-L-E E-I-S-E-N,
6 2500 Dollar Avenue, Apartment 1, Buffalo, New York 14213.

7 MS. POLITO: Judge, Respondent does have a standing
8 objection. To the extent that the Board is submitting evidence
9 at this time in support of the continuing 10(j) proceeding,
10 Leslie v. Starbucks in the Western District of New York,
11 pending before Honorable Sinatra, which was stayed, in part, by
12 Judge Sinatra on -- which was stayed in full by Judge Sinatra
13 on June 30th, 2022, Respondent objects to such evidence and
14 notes for the record that none of the evidence that the Board
15 is about to submit can be used in the continuing 10(J)
16 proceeding per order of Your Honor issued on July 10, 2022,
17 which effectively stays such evidence until the Board rules on
18 Respondent's special request.

19 MS. CACACCIO: If I may be heard?

20 JUDGE ROSAS: Sure.

21 MS. CACACCIO: Counsel Cacaccio. Counsel, given your --
22 given your order awaiting the response to the special appeal,
23 at this time we will not be entering any chill evidence into
24 this particular proceeding, i.e., the just and proper prong.
25 However, obviously a reasonable -- the reasonable cause prong

1 is basically the basis of this case. So obviously, we'll be
2 entering evidence with respect to the reasonable cause that we
3 had to proceed on 10(J).

4 JUDGE ROSAS: Anything else you want to add?

5 MS. POLITO: No, Your Honor. Thank you.

6 JUDGE ROSAS: Okay.

7 MS. CACACCIO: And Your Honor, as we've discussed, off the
8 record at least, as General Counsel has not received any
9 subpoenaed documents, we call Ms. Eisen with -- subject to
10 recall --

11 JUDGE ROSAS: That is --

12 MS. CACACCIO: -- as necessary.

13 JUDGE ROSAS: -- that is going to be the case with respect
14 to any witnesses that are called for which subpoenaed material
15 is outstanding. And that applies to everyone --

16 MS. CACACCIO: Yes, Judge.

17 JUDGE ROSAS: -- including General Counsel subpoenas,
18 Charging Party subpoenas, and Respondent subpoenas. So --

19 MS. CACACCIO: Yes, Your Honor.

20 JUDGE ROSAS: -- everybody is subject to recall.

21 Like I said, I work with what I've got and I try to make
22 some rationality out of this.

23 MS. CACACCIO: I understand.

24 JUDGE ROSAS: Let's go.

25 MS. CACACCIO: And I -- I don't need to --

1 JUDGE ROSAS: No.

2 MS. CACACCIO: -- state that every time.

3 JUDGE ROSAS: No, no, don't --

4 MS. CACACCIO: Okay.

5 JUDGE ROSAS: -- these things need to be -- these things
6 need to be reenforced --

7 MS. CACACCIO: Okay.

8 JUDGE ROSAS: -- and clarified. We move forward. The
9 train is leaving now.

10 MS. CACACCIO: Understood.

11 **DIRECT EXAMINATION**

12 Q BY MS. CACACCIO: Good afternoon, Michelle. What are your
13 pronouns?

14 A She/her.

15 Q Who is your employer?

16 A Starbucks Corporation and Workers United.

17 Q How long have you worked for Starbucks?

18 A I was originally hired in August of 2010. I was with the
19 Company until May of 2012. I left for a few months. And my
20 rehire date is February of 2013.

21 Q And what positions did you hold with Starbucks?

22 A I have been a shift supervisor and a barista. I am
23 currently a barista.

24 Q When were you a shift supervisor?

25 A I was shift supervisor in -- from 2011 until 2012. Then



1 again from 2014 to 2015.

2 Q Can you tell us what locations you've worked in and when
3 you worked there?

4 A I started at the Transit Commons location in East Amherst
5 in August of 2010. I was there until January of 2012, and then
6 transferred to a location on the Island of Oahu, Hawaii. The
7 name of the store was Mililani Town Center. I was there from
8 February 2012 until May of 2012. I then left the Company. I
9 moved back to Buffalo. I was rehired at Transit Commons in
10 February of 2013. I was there until March of 2015. And then I
11 transferred to the Elmwood Avenue location in March 2015, and I
12 am currently still there.

13 Q How often do you work currently?

14 A Currently my availability is Mondays and Tuesdays.

15 Q And how many hours are you working currently?

16 A Subject to weekly scheduling, about ten hours a week I
17 would say.

18 Q And when did your availability become those two days?

19 A I submitted that availability request in early January of
20 2022.

21 Q And what happened to that request?

22 A It stayed sort of on ice for a number of weeks, and then
23 it was subsequently approved by my store manager.

24 Q Are you familiar with the Union Workers United?

25 A Yes, I am.



1 Q How are you familiar with the Union?

2 A I'm a member of the Workers United Union, and I am
3 employed by them as well.

4 Q In what position are you employed by them?

5 A The title is director of partner education.

6 Q And when did you get that title?

7 A Mid-February of 2022.

8 Q And prior to mid-February of 2022, were you employed by
9 the Union prior to that?

10 A No, I was not.

11 Q And what title do you currently have with the Union?

12 A It is still director of partner of education.

13 Q And what do you do as the director of partner education?

14 A I talk to respective organizing stores and partners across
15 the country and advise them on this process, offer support
16 based on experiences that I went through organizing the Elmwood
17 location. I'm basically on hand if they have any questions
18 they may have about the campaign or the process.

19 Q Are you a member of the Union's organizing committee?

20 A Yes, I am.

21 Q And when did you join the organizing committee?

22 A Approximately August 17th of 2021.

23 Q And even with this new role that you have with the Union,
24 are you still a member of the organizing committee?

25 A Yes, I am.



1 Q What do you do as a member of the organizing committee?

2 A It's very similar to the director of partner education.

3 It is connecting with stores. They'll reach out if they have
4 interest in organizing, guiding them through that process.

5 Holding weekly calls, discussing what point we are in

6 organizing, if they're -- have petitions or staffing cards,
7 staying in communication with them throughout that process.

8 Q Are you involved in bargaining?

9 A I am as well.

10 Q For what locations?

11 A The Elmwood Avenue location, the Genesee Street location,
12 and the Power and Baseline location in Mesa, Arizona.

13 Q Do you know when the Union campaign went public?

14 A It went public Monday, August 23rd, 2021.

15 Q And how did the campaign go public?

16 A A letter was sent to the then CEO, Kevin Johnson, and also
17 posted on our social media accounts, I believe Twitter,
18 Instagram, and Facebook, all of which also went live on August
19 23rd.

20 Q If I showed you a copy of that letter, would you be able
21 to recognize it?

22 A Yes, I would.

23 Q I'm now directing your attention to what's in front of you
24 as General Counsel Exhibit 2. What is the document that's in
25 front of you?

1 A This is a picture of a tweet from August 23rd, 2021 where
2 we posted the letter to Kevin Johnson expressing our interest
3 to organize.

4 Q And what's the Twitter handle at the top left? Whose
5 Twitter handle is that?

6 A SB Workers United. That would be the Twitter handle for
7 the campaign.

8 Q And do you know when the tweet went public -- when it was
9 posted?

10 A August 23rd, 2021. Looks like 12:30 in the afternoon.

11 MS. POLITO: Object, Your Honor. I'm going to object to
12 the word public. Just because it was tweeted doesn't mean that
13 it went public. Not everybody reads Twitter.

14 JUDGE ROSAS: Sustained for that purpose. Sustained for
15 that purpose. Right now we're -- we're still establishing
16 foundation for receipt of the document.

17 Next question.

18 MS. CACACCIO: I'd offer General Counsel Exhibit 2.

19 JUDGE ROSAS: Any objection? Voir dire?

20 MS. POLITO: I'm sorry, I --

21 MS. CACACCIO: I'm sorry. I offer General Counsel Exhibit
22 2.

23 MS. POLITO: Yes, I'd like to voir dire.

24 **VOIR DIRE EXAMINATION**

25 Q BY MS. POLITO: Ms. Eisen, the General Counsel Exhibit

1 Number 2 is a copy of a page from a Twitter account; is that
2 correct?

3 A It looks like a screen grab from our Twitter account, yes.

4 Q And when you say it looks like a screen grab, did you do
5 the screen grab, or did someone else do it?

6 A I did not do the screen grab, no.

7 Q So how do you know that this would be an accurate copy of
8 that screen grab?

9 A Because I know what a screen grab looks like, and I know
10 what a Twitter account looks like.

11 Q But you don't -- you don't know that this is a complete
12 screen grab of this particular "Dear Kevin" letter; is that
13 correct?

14 A I -- I guess I know what the "Dear Kevin" letter looks
15 like, and I can attest that this is the image of that letter.

16 Q Okay. But this image also includes additional information
17 on it, so -- is that correct -- relating to the Twitter feed?

18 A The page -- the full piece of paper, or the two images of
19 the letter?

20 Q The -- the piece of paper -- sticking with the piece of
21 paper in front of us, you've already testified that you do not
22 know that this is a full screen grab; is that correct?

23 MS. CACACCIO: Objection. Misstates the evidence. That's
24 not what she testified to.

25 JUDGE ROSAS: Overruled.

1 You can answer if you know.

2 A I mean, I know that this is a screen grab of a Twitter
3 post from our account, yes.

4 Q BY MS. POLITO: But you don't know that it's a complete
5 screen grab. That's what I asked you earlier and you said,
6 yes; is that correct?

7 A I guess I don't know for sure that it's a complete screen
8 grab.

9 MS. POLITO: Judge, I would object on those grounds.

10 MS. CACACCIO: May I ask some more --

11 MS. POLITO: The letter speaks for itself. The "Dear
12 Kevin" letter speaks for itself.

13 JUDGE ROSAS: You need further questions?

14 MS. CACACCIO: Yes.

15 RESUMED DIRECT EXAMINATION

16 Q BY MS. CACACCIO: Michelle, did you ever see the tweet
17 that was posted?

18 A Yes, I did.

19 Q When was the last time you saw that tweet?

20 A I saw it the day that it was posted, on the 23rd of August
21 2021.

22 Q When was the last time you saw it?

23 A And then it was reposted a couple of weeks ago on our
24 account.

25 Q Do you remember anything else in the tweet other than

1 what's on the paper in front of you?

2 A No, I do not.

3 MS. CACACCIO: Your Honor, I now offer General Counsel
4 Exhibit 2.

5 JUDGE ROSAS: Is there anything you want to add?

6 MR. HAYES: No.

7 JUDGE ROSAS: Okay. So help me out here. We're talking
8 about a -- a screen grab of a Twitter feed?

9 THE WITNESS: I believe so, yes.

10 JUDGE ROSAS: Is that the entire page that we're looking
11 at?

12 THE WITNESS: This would be what a screen grab looks like.
13 So it would have the date of the original posting, which this
14 does have, and it would have the retweets, the post-tweets, and
15 the number of likes that had occurred on that post at the time
16 the screen grab was taken.

17 JUDGE ROSAS: So the logo in the upper left, from there
18 down to -- and I'll assume that there's nothing behind the
19 exhibit label. Lower right-hand corner, the word "like," then
20 you go to the other side of the lower corner, 854, and you go
21 to the upper right, you see three dots; is that correct?

22 THE WITNESS: That is correct.

23 JUDGE ROSAS: Okay. So the four corners of that piece of
24 paper, are you saying that that's the entirety of a screen
25 grab?

1 THE WITNESS: For this tweet, yes, I am.

2 MR. HAYES: Your Honor, if I -- if I may? Just over
3 her -- I was just -- I -- I took the screen grab.

4 MS. POLITO: Judge, Counsel can't testify.

5 JUDGE ROSAS: Yeah, it --

6 MR. HAYES: I --

7 JUDGE ROSAS: Look, let -- let me complete it with the
8 witness. Okay. So I've asked her those questions.

9 MS. POLITO: So --

10 JUDGE ROSAS: Let -- let me hear from the Respondent
11 before you address this.

12 MS. POLITO: Judge, we object to the introduction of
13 General Counsel Exhibit Number 2 because this witness has
14 testified that she does not know that this is the entire screen
15 grab. She did not do the screen grab. All she is stating is
16 that she's looking at a document that could have been printed
17 by anyone, could have been modified. There's dates, August
18 23rd. I don't know if that's accurate. She doesn't know if
19 it's accurate. And she stated that she didn't do it. So this
20 witness can't authenti -- authenticate this document. So for
21 those reasons it should not be entered into evidence.

22 MS. CACACCIO: If I might be --

23 JUDGE ROSAS: Anything else?

24 MS. CACACCIO: -- heard? That's not what the witness
25 testified to, Judge. Not only did she say that's when the

1 tweet went out, that she saw it the day it went out. She saw
2 it as recently as a week or two ago. And as -- when there were
3 more questions asked of her, she was able to identify that
4 there would be nothing additional in -- in the tweet that would
5 be missing. And if -- if Respondent thinks there's additions,
6 they're hap -- I'm happy to accept any additions there might be
7 to this tweet, but there aren't any.

8 JUDGE ROSAS: Okay. So the witness has responded in the
9 affirmative. I understand you've asked some questions that, in
10 your mind, may create some confusion or doubt. However, all
11 that -- for the admission of a document that is required, is
12 that there be some indication by the witness that the document
13 is what the witness says it purports to be. What you're
14 addressing is essentially something that will go to the weight
15 of the document. But based on what I recall her saying, this
16 will be received into evidence. You can address the weight.
17 You can address the credibility. You can address the
18 testimony. Okay? Overruled.

19 General Counsel's 2 is received.

20 **(General Counsel Exhibit Number 2 Received into Evidence)**

21 MS. POLITO: Please note our objection for the record.

22 JUDGE ROSAS: Um-hum.

23 Q BY MS. CACACCIO: Michelle, I want to direct your
24 attention to General Counsel Exhibit 3. What's that document?

25 A This is the entirety of the "Dear Kevin" letter that was



1 sent to Kevin Johnson on August 23rd, 2021 expressing our
2 desire to organize.

3 Q How many pages is it?

4 A It is three pages.

5 Q What's the third page?

6 A The third page is the noninterference and fair election
7 principles for partner unionization.

8 Q And what are the first two pages?

9 A They are the letter themselves -- the letter itself, as
10 well as the list of partners who signed on publicly to it.

11 Q And how do you know what this is -- what General Counsel
12 Exhibit 3 is?

13 A I was presented with it before it was sent to Kevin
14 Johnson. I was able to view it. I also signed on to it. And
15 I viewed it both on our -- our social medias on August 23rd,
16 and had access to the email that it was sent from as well.

17 MS. CACACCIO: Your Honor, I'd offer General Counsel's
18 Exhibit 3.

19 JUDGE ROSAS: Respondent?

20 MS. POLITO: Your Honor, if I may?

21 JUDGE ROSAS: Um-hum.

22 **VOIR DIRE EXAMINATION**

23 Q BY MS. POLITO: Ms. -- Ms. Eisen, your name is identified
24 on page 2 of General Counsel Exhibit 3; is that correct?

25 A That is correct.

1 Q And you testified that you reviewed the letter before you
2 signed it; is that correct?

3 A Correct.

4 Q And the content of the letter on page 1 are what you
5 reviewed before you signed it?

6 A That is correct.

7 Q Did you mail the letter out?

8 A The letter was emailed from the SB Workers United Gmail
9 account.

10 Q Okay. Going to page 3 of the letter, the noninterference
11 and the -- and the caption?

12 A Yes.

13 Q Was that included in the letter before you signed it?

14 A The -- the non -- yes.

15 Q That exhibit to the letter was included before you
16 reviewed the letter contents on page 1?

17 A We had -- had reviewed this list around the same time as I
18 reviewed the letter.

19 Q That -- that wasn't my question though. So you indicated
20 that you reviewed page 1 of the letter before you signed it.

21 My question is, page 3 of the attachment, did you review that
22 completely -- that attachment -- before you signed the letter?

23 A That was presented at the same meeting where I agreed to
24 sign the letter.

25 Q And so all three documents you reviewed before you signed

1 the letter?

2 A Correct.

3 Q And you are aware that that letter was emailed by
4 Starbucks Workers United; is that correct?

5 A Correct.

6 MS. POLITO: No objection, Judge.

7 JUDGE ROSAS: General Counsel's 3 is received.

8 **(General Counsel Exhibit Number 3 Received into Evidence)**

9 **RESUMED DIRECT EXAMINATION**

10 Q BY MS. CACACCIO: Other than signing this letter, have you
11 made your Union support known in any other way?

12 A I have.

13 Q How?

14 A The first thing I did when we went public was to put a
15 Union pin on my apron.

16 Q How did you get that pin?

17 A A coworker of mine came in the day that we went public
18 with a handful of them and handed them to me across the -- the
19 counter. I was in the bar position. And I took one of the
20 pins and put it on my apron.

21 Q Who was that --

22 MS. POLITO: Judge, I'm just going to object to the
23 witness' continued use of the work pubic. I -- I don't know
24 what means in this context, and there's been no evidence that
25 any campaign was made public on any particular date.

1 MS. CACACCIO: Your Honor, if I might be heard? The
2 witness has already testified that they put this letter on all
3 their social medias, that it was sent to Respondent's CEO. I
4 don't know how much more public you can get than posting to all
5 of your social media. I mean, that's about -- that -- that's
6 what public means as a -- as a general definition.

7 MS. POLITO: Judge, if I -- if I may respond? The use of
8 social media in this case is a -- is a big deal, but it doesn't
9 mean that anybody actually saw it. And the letter that was
10 just admitted as an exhibit doesn't even have a date on it. So
11 the continued reference to a particular date, as well as the
12 fact that something was made public is inappropriate and should
13 be stricken from the record.

14 MS. CACACCIO: If I might be heard? General Counsel's
15 Exhibit 2 does have a date on it. And the witness just
16 testified that that was emailed to Kevin Johnson on that same
17 date. So the witness has testified to that. Whether the
18 exhibit itself has a date on it or not is irrelevant.

19 JUDGE ROSAS: All right. I'm going to overrule the
20 objection, but note that I'm receiving the testimony
21 essentially for the -- for the point that the witness has
22 testified that this information was put on social media.

23 The Respondent -- to the extent the Respondent is
24 concerned about whether or not anyone or any -- anyone in the
25 public that's not a Starbucks employee, or that the Respondent

1 received notice, you know, is -- is not the case.

2 You know, this is going to be an example of instances in
3 which certain terms can be loaded from the standpoint of -- of
4 the case, can -- in the view of some counsel might have some
5 conclusory aspect to it that could have a legal connotation to
6 it, but you know, we can only inhibit common language, you
7 know, so much. And at the same time we'll just make note of
8 what these -- what the testimony means. Okay?

9 MS. POLITO: Thank you for noting that objection, Your
10 Honor.

11 Q BY MS. CACACCIO: Michelle, do you know whether the
12 Union's Twitter is public or private?

13 A It is a public Twitter account.

14 Q And I apologize if I asked this already. Who is the
15 coworker that gave you those pins?

16 A Jaz Brisack.

17 Q And what did you do when she gave you the pin?

18 A I took one for myself. I put it on my apron immediately.
19 I put a couple of others in my apron pocket in case somebody
20 else asked for one.

21 Q And how often did you wear that pin after that?

22 A Every day, with the few exceptions of a customer
23 expressing interest in me taking it off to give it to them.
24 And then I replaced it with another one at my earliest
25 convenience.

1 Q And what was the design of the pin that wore?

2 A It is the green Starbucks Workers United shaker fist logo.

3 Q Now, have you talked to the media at all about the
4 campaign?

5 A Yes, I have.

6 Q And as far as you know, have any of those media interviews
7 been published?

8 A Yes, they have.

9 Q Do you remember any specifically?

10 A The first one I did was sometime around the middle of
11 September. It was a live phone interview with Yahoo Finance.
12 And there were many, many others after that.

13 Q Do you know what stores filed petitions in the Buffalo
14 area?

15 A The first round or in their entirety?

16 Q In their entirety.

17 A Eight.

18 Q What are they?

19 A Elmwood Avenue location, Genesee Street, Camp Road, Walden
20 Anderson, Transit Commons, Depew, Sheridan and Bailey, Delaware
21 and Chippewa, East Robinson, and I believe that is it.

22 Q Do you know whether the Williamsville Place store filed?

23 A Oh. I'm sorry, yeah. My apologies.

24 Q And when were the first petition filed in the Buffalo
25 area?

1 A Monday, August 30th, 2021.

2 Q And how do you know that?

3 A One of them was the Elmwood location, which was my store.

4 Q Now, if I showed you a copy of the Elmwood petition, could
5 you identify it?

6 A Yes, ma'am.

7 MS. CACACCIO: Your Honor, I'm showing the witness General
8 Counsel's Exhibit 4. It is double-sided, just so you know.

9 BY MS. CACACCIO:

10 Q What's General Counsel's Exhibit 4?

11 A It is the petition for the Elmwood Avenue location.

12 Q How do you know that?

13 A It has the Elmwood Avenue address listed in the 2B box.

14 MS. CACACCIO: Your Honor, I now offer General Counsel's
15 Exhibit 4.

16 MS. POLITO: No objection, Your Honor.

17 JUDGE ROSAS: General Counsel's 4 is received.

18 **(General Counsel Exhibit Number 4 Received into Evidence)**

19 BY MS. CACACCIO:

20 Q What was the result of the Elmwood election?

21 A The Elmwood Avenue won their election.

22 Q If I showed you a copy of the Elmwood certification of
23 representative, would you be able to recognize that?

24 A Yes, I would.

25 MS. CACACCIO: I'm now showing the witness General

1 Counsel's Exhibit 5.

2 BY MS. CACACCIO:

3 Q What's General Counsel's Exhibit 5, Michelle?

4 A It is the certification for the Elmwood Avenue location.

5 MS. CACACCIO: Your Honor, I now offer General Counsel's
6 Exhibit 5.

7 MS. POLITO: No objection, Your Honor.

8 JUDGE ROSAS: General Counsel's 5 is received.

9 **(General Counsel Exhibit Number 5 Received into Evidence)**

10 BY MS. CACACCIO:

11 Q You also mentioned Camp Road. If I showed you a copy of
12 that petition, could you recognize it?

13 A Yes.

14 MS. CACACCIO: I'm now showing the witness General
15 Counsel's Exhibit 6.

16 BY MS. CACACCIO:

17 Q What's General Counsel's Exhibit 6?

18 A It is the petition for the Camp Road location.

19 MS. CACACCIO: Your Honor, I now offer General Counsel's
20 Exhibit 6.

21 MS. POLITO: No objection, Your Honor.

22 JUDGE ROSAS: General Counsel 6 is received into evidence.

23 **(General Counsel Exhibit Number 6 Received into Evidence)**

24 BY MS. CACACCIO:

25 Q Do you know what the result was of the Camp Road election?

1 A To the best of my knowledge, it has not been determined as
2 of yet.

3 Q You mentioned Genesee Street. If I showed you a copy of
4 the Genesee Street store petition, could you identify it?

5 A Yes, I could.

6 MS. CACACCIO: Showing the witness General Counsel Exhibit
7 7.

8 BY MS. CACACCIO:

9 Q What's General Counsel's Exhibit 7?

10 A It is a petition for the Gene -- Genesee Street location.

11 MS. CACACCIO: Your Honor, I now offer General Counsel
12 Exhibit 7.

13 MS. POLITO: Judge, again, we have no objection. This is
14 a public document. So for that reason we're not objecting to
15 the RC petition document.

16 JUDGE ROSAS: General Counsel 7 is received.

17 **(General Counsel Exhibit Number 7 Received into Evidence)**

18 BY MS. CACACCIO:

19 Q What were the results of the Genesee Street election?

20 A It was not determined, again, on the day of the vote
21 count, but was later certified, I believe, January 10th of
22 2022.

23 Q If I showed you a copy of that certification, would you be
24 able to recognize it?

25 A Yes, I would.

1 MS. CACACCIO: Showing the witness General Counsel's
2 Exhibit 8.

3 BY MS. CACACCIO:

4 Q Directing your attention to page 5 of 6 and 6 of 6. Do
5 you know what this document is?

6 A It is the certification for the Genesee Street location.

7 MS. CACACCIO: Your Honor, I offer General Counsel Exhibit
8 8 into evidence.

9 MS. POLITO: Judge, Respondent has no objections because
10 it's a public document, again, from the case. We're still not
11 convinced that this witness has the foundation to enter this
12 document into evidence or talk about it other than the fact
13 that she's seen it. But we have no objection, because it's a
14 public document, to Counsel admitting it into the record.

15 JUDGE ROSAS: General Counsel 8 is received.

16 **(General Counsel Exhibit Number 8 Received into Evidence)**

17 BY MS. CACACCIO:

18 Q You mentioned Transit Commons filed a petition. If I
19 showed you a copy of that petition, could you recognize it?

20 A Yes, I could.

21 MS. CACACCIO: Showing the witness General Counsel's
22 Exhibit 9.

23 BY MS. CACACCIO:

24 Q What's General Counsel's Exhibit 9?

25 A This is the first petition for the Transit Commons

1 location.

2 MS. CACACCIO: Your Honor, I now offer General Counsel
3 Exhibit 9.

4 MS. POLITO: Can I just ask the witness a question?

5 **VOIR DIRE EXAMINATION**

6 Q BY MS. POLITO: Ms. Eisen, you indicated this is the first
7 petition. How do you know it's the first petition?

8 A Because they filed their first petition on the 8th of
9 September, and then subsequently withdrew it a day or two later
10 in order to not restart the clock on the first group petition
11 filed among them.

12 Q And when you said, I filed it, did you actually file it?

13 A No, I didn't say I. I said they.

14 Q They filed it. And so at the bottom, there's a date of
15 September 8th?

16 A Correct.

17 Q So wouldn't that be the first petition? This is the first
18 petition?

19 A That's what I said.

20 Q Okay. So there's two days. There's also a date on the
21 top that says date filed, 9/9/2020.

22 A I believe the date filed by the Union was the 8th, and the
23 date received by the NLRB was the 9th.

24 Q How do you know that information? Just by reading the
25 document? Or did someone tell you that information?

1 A Well, I understand how these work. This is the tenth one
2 we've done.

3 Q But my question wasn't whether you understood how it
4 worked --

5 A At some point --

6 Q Let me finish my question please. My question was, how
7 did you know of those dates? Did someone tell you that
8 information?

9 A Did someone tell me the date that something was filed?

10 Q Correct.

11 A Yes. The barista at the Transit Commons location said,
12 we're filing our petition today. And that was the 8th of
13 September.

14 Q And who told you that?

15 A Michael Sanabria.

16 Q And who is he?

17 A He is a barista or shift supervisor, I believe, at the
18 Transit Commons locations.

19 MS. CACACCIO: Your Honor, I object. This voir dire is
20 outside the scope of voir dire.

21 JUDGE ROSAS: Well --

22 MS. CACACCIO: If she wants to bring this up on cross-
23 examination, she can.

24 JUDGE ROSAS: I'm pretty liberal about the scope of voir
25 dire because it obviates the need for further questioning on

1 cross-examination. Anything previously asked and answered on
2 voir dire has been answered for purposes of cross. Unless
3 there is anything in addition that needs to be addressed vis-a-
4 vi way.

5 MS. POLITO: No further questions, Judge. And we have no
6 objection to the introduction.

7 JUDGE ROSAS: General Counsel's 9 is received.

8 **(General Counsel Exhibit Number 9 Received into Evidence)**

9 **DIRECT EXAMINATION**

10 Q BY MS. CACACCIO: And you sort of just went through this
11 with Ms. Polito, but did that store have an election based on
12 the petition that we just showed you, General Counsel's Exhibit
13 9?

14 A No, it did not.

15 Q What happened?

16 A My understanding of what happened is that it was going to
17 restart those -- that petition was going to restart the clock
18 on the first three petitions that were filed in Buffalo on
19 August 30th. With that recognition, the partners at that store
20 decided to pull that petition, and to wait to refile until
21 after we received the decision from our -- this hearing.

22 Q So if I showed you a copy of the order approving the
23 withdrawal of that petition, would you recognize it?

24 A I would.

25 MS. CACACCIO: I'm now showing the witness General

1 Counsel's Exhibit 10.

2 BY MS. CACACCIO:

3 Q What's that document?

4 A It's the withdrawal request for that petition for Transit
5 Commons.

6 MS. CACACCIO: Your Honor, I offer General Counsel's
7 Exhibit 10.

8 MS. POLITO: Your Honor, if I may?

9 **VOIR DIRE EXAMINATION**

10 Q BY MS. POLITO: Ms. Eisen, do you recognize this document
11 just because someone's provided you with a copy of the
12 document?

13 A Yes. Yes, I do.

14 Q So you've seen it before? Is that correct?

15 A Yes, these are all emailed documents from throughout this
16 campaign process.

17 Q In your role in working for the Union, is it your -- under
18 your scope to maintain a record of these documents at all?

19 A No, I don't maintain a record of them.

20 Q Is there anyone at the Union that is tasked with
21 maintaining these petitions and orders that we're talking
22 about?

23 A There may be, but I do not know who that person would be.

24 Q Okay.

25 MS. POLITO: Judge, we have no objection for the reason we



1 discussed earlier, that it's a public document. And for that
2 reason, we'll allow it.

3 JUDGE ROSAS: General Counsel's 10 is received.

4 **(General Counsel Exhibit Number 10 Received into Evidence)**

5 **DIRECT EXAMINATION**

6 Q BY MS. CACACCIO: Do you know whether the Transit Commons
7 store ever refiled?

8 A They did, yes.

9 Q Yeah, but do you know about when that happened?

10 A It was the end of April of 2022.

11 Q If I showed you a copy of that petition, would you
12 recognize it?

13 A Yes, I would.

14 MS. CACACCIO: Your Honor, I'm now showing the witness
15 General Counsel's Exhibit 11.

16 BY MS. CACACCIO:

17 Q Michelle, what's General Counsel's Exhibit 11?

18 A This is the new petition for the Transit Commons location.

19

20 MS. CACACCIO: Your Honor, I offer General Counsel's
21 Exhibit 11.

22 **VOIR DIRE EXAMINATION**

23 Q BY MS. POLITO: Ms. Eisen, when you said new petition, was
24 there a prior petition?

25 A The prior petition was the one we just finished



1 discussing.

2 Q Okay. Any other prior petitions?

3 A Not that I'm aware.

4 Q You didn't have any involvement with creating this
5 document; is that correct?

6 A I did not.

7 Q And you just reviewed the document as it was presented to
8 you; is that correct?

9 A Yes, correct.

10 Q You don't know in fact that it was filed on April 28,
11 2022, other than reading the document, is that correct?

12 A I mean, I have correspondence with partners at that store
13 that said, we're filing our petition today. And that was my --

14 Q Okay. Was the form of that correspondence email or --

15 A Text message.

16 Q -- some other form of --

17 A Text message.

18 Q Text messages?

19 A And email, as well.

20 Q Okay. And what text messages would reflect that you were
21 told on April 28th that this was filed?

22 A An excited text message from a partner that said, we're
23 filing our petition today.

24 Q And do you remember the name of that partner?

25 MS. CACACCIO: Your Honor, I object. If I might be heard?



1 This isn't -- not only is this not appropriate at this -- at
2 this juncture. It appears as though -- well, we can deal with
3 that later.

4 We object that this isn't relevant at this point. It's
5 not voir dire, it's not cross-examination yet, and it's not
6 relevant, to the exception that maybe, Respondent's going to
7 now be subpoenaing this witness, which they have not yet done.

8 JUDGE ROSAS: Overruled. Anything else?

9 UNIDENTIFIED SPEAKER: Did you get an answer on that?

10 BY MS. POLITO:

11 Q What were -- who was the excited person that sent you the
12 text message?

13 A Michael Sanabria.

14 Q And were -- was it just the two of you on the text
15 message?

16 A I do not recall.

17 Q And did you send copies of those text messages?

18 A I may.

19 Q Through your cell phone?

20 A Through mine, yes.

21 Q You also said that there were emails, I think?

22 A Correct.

23 Q And who were on the emails?

24 A Aside from my myself and Michael, I am not entirely sure.

25 Q And was that an email from your employment with the Union



1 or was that a private email?

2 A That was with a private email.

3 Q Could you send out a copy of that email?

4 A I may, yes.

5 Q Thank you.

6 MS. POLITO: No objection to this document, Judge.

7 JUDGE ROSAS: General Counsel's 11 is received.

8 **(General Counsel Exhibit Number 11 Received into Evidence)**

9 **DIRECT EXAMINATION**

10 Q BY MS. CACACCIO: Do you know what the results were of
11 that election?

12 A I believe that the vote count is happening today.

13 Q You also mentioned that the Walden and Anderson store
14 filed a petition. If I showed you a copy of that petition,
15 would you recognize it?

16 A Yes, I would.

17 MS. CACACCIO: Showing the witness General Counsel's
18 Exhibit 12.

19 BY MS. CACACCIO:

20 Q What's that document?

21 A This is the first petition filed for the Walden and
22 Anderson location.

23 Q How do you know that?

24 A Because of the date at the bottom listed as the 8th of
25 September, 2021.



1 MS. CACACCIO: Your Honor, I now offer General Counsel's
2 Exhibit 12.

3 **VOIR DIRE EXAMINATION**

4 Q BY MS. POLITO: Ms. Eisen, if you take a look at the top
5 of Exhibit 12, is it accurate to say that the case number and
6 date filed are empty, blank?

7 A They aren't.

8 Q And so you don't know as of today if that was actually
9 filed, is that correct?

10 A I mean, only going by the date at the bottom, but if it --
11 if we have to focus on the date on the top, then I don't know.

12 Q The date bottom is just the date that Mr. Hayes signed the
13 document, is that correct?

14 A I believe so.

15 MS. POLITO: And so Judge, I will object to the
16 introduction of this document because it does not indicate when
17 it was actually filed. If General Counsel has a different
18 petition with a filing date, I'm happy to reconsider.

19 JUDGE ROSAS: What is this being offered for?

20 MS. CACACCIO: For the date that it was filed. I mean, if
21 you would look at General Counsel's Exhibit 13, Judge, you'll
22 see that it was withdrawn, which means it was filed --

23 JUDGE ROSAS: Put it aside. Hold on. Go to the next one.

24 MS. CACACCIO: The copy in our records doesn't have that
25 case number filled in, but it was obviously filed if it was

1 then withdrawn.

2 JUDGE ROSAS: You're going to go -- you said that General
3 Counsel's 13 for identification would provide context?

4 MS. CACACCIO: Yes, Your Honor.

5 JUDGE ROSAS: Well, go to it.

6 **DIRECT EXAMINATION**

7 Q BY MS. CACACCIO: Michelle, I'm directing your attention
8 to General Counsel's Exhibit 13 -- well, before you do that,
9 Michelle -- do you know what happened to the first Walden and
10 Anderson petition?

11 A It was very similar. It was the same situation as the
12 first Transit Commons petition. Once it was -- they were made
13 aware that it would start the clock over on the first three
14 petitions filed on August 30th, in Buffalo, they chose to
15 withdraw that, in order not to restart the clock --

16 MS. POLITO: Objection. I'm going to object based on
17 hearsay. She's talking about they chose to object. I don't
18 know who they are. She's indicated she's not a party to that.
19 So I'm asking that the --

20 JUDGE ROSAS: I'm going to sustain that.

21 BY MS. CACACCIO:

22 Q How do you know, Michelle?

23 A How do I know that they chose -- that the partners at the
24 store chose to withdraw the petition?

25 Q Yeah.

1 A Because I had communication with partners at that store.

2 MS. POLITO: So we object in direct of hearsay testimony.

3 MS. CACACCIO: Your Honor, I believe it's subject to
4 connection with other witnesses from that location.

5 JUDGE ROSAS: Subject to corroboration.

6 MS. CACACCIO: Yes, Your Honor.

7 JUDGE ROSAS: Okay. So in these -- in these cases, we can
8 receive hearsay testimony that might not otherwise be
9 admissible in the District Court if it is reliable, and one of
10 the modes for establishing reliability would be corroboration.

11 And with Counsel's representation, I'm going to
12 conditionally receive it, subject to being stricken, should
13 that not end up being the case. Okay?

14 BY MS. CACACCIO:

15 Q So Michelle, looking at General Counsel's Exhibit 13, do
16 you know what that is?

17 A The request for withdrawal of the first petition filed by
18 the Walden and Anderson location.

19 MS. CACACCIO: Your Honor, I offer General Counsel Exhibit
20 12 and Exhibit 13. And Ms. Polito has pointed out, these are
21 public records, and they are self-authenticating, at least
22 General Counsel's Exhibit 13 is.

23 MS. POLITO: Judge, I have no objection to Exhibit Number
24 13, but I my objection to Number 12 remains. There is no
25 indication on Exhibit 12 that I can see that actually

1 references the case number, and there's no date filed. So
2 again, subject to an actual filed document, I object to Exhibit
3 12 into the record, but I -- we have no objection to Exhibit
4 13.

5 MS. CACACCIO: Your Honor, I would be happy to look in
6 that case file again, but this is the filed charge. Whether it
7 has the date or case number in it, it seems like a filing
8 problem. But that doesn't mean it wasn't filed after there was
9 a withdrawal of it in General Counsel's Exhibit 13. It was
10 pulled out of that case file.

11 JUDGE ROSAS: General Counsel's 13 refers to a request to
12 withdraw a petition without prejudice. And further orders that
13 a notice of representation hearing previously issued in this
14 matter is withdrawn. The hearing that is scheduled for
15 September 29, 2021 is canceled.

16 I'm not sufficiently satisfied that it corroborates
17 General Counsel's Exhibit 12 for the point that it was filed.
18 It may have been in a file, but that doesn't convince me or
19 give me enough indicia of reliability that it was filed,
20 because there is no file date at the top. So it's going to
21 need further evidence to support that argument, if at all.
22 So --

23 MS. CACACCIO: Your Honor --

24 JUDGE ROSAS: -- sustained at the General Counsel's 12 at
25 this point.

1 **(General Counsel Exhibit Number 12 Rejected)**

2 MS. CACACCIO: I'd ask Your Honor to take judicial notice
3 of case 03RC-282641, which was opened for the filing of the
4 petition at the Walden and Anderson store.

5 JUDGE ROSAS: Repeat that again.

6 MS. CACACCIO: I'd ask Your Honor to take judicial notice
7 of case 03RC-282641, which was opened for the filing of the
8 petition at the Walden and Anderson store.

9 JUDGE ROSAS: Do you have that?

10 MS. CACACCIO: It's in front of you, as you see, Exhibit
11 12.

12 JUDGE ROSAS: No. You said -- you said there was a
13 decision in that case, and that's what this order is?

14 MS. CACACCIO: Judge, the case number at the top --

15 JUDGE ROSAS: This --

16 MS. CACACCIO: -- right.

17 JUDGE ROSAS: This result?

18 MS. CACACCIO: Right. Was the result of a filing of a
19 petition at the Walden and Anderson store, in case number 03RC-
20 282641.

21 JUDGE ROSAS: It doesn't refer to it -- the date that a
22 petition was filed. How do I know it's this petition?

23 MS. CACACCIO: That's why I'm asking you to take judicial
24 notice of it, Judge. Because it's all -- it's all public
25 record.

1 I mean, I can't produce something that doesn't exist. And
2 because we didn't, for some reason, put a date -- a file date,
3 doesn't mean it wasn't filed, Judge. That's my problem.

4 JUDGE ROSAS: Well --

5 MS. CACACCIO: I can't produce to you something I don't
6 have. So I can look to file again. I can talk to whoever took
7 it. I can, you know -- but --

8 JUDGE ROSAS: That piece is missing, Counsel. You're
9 going to need to establish that with someone other than this
10 witness.

11 Sustained, as to General Counsel's 12. General Counsel's
12 13 is in evidence.

13 **(General Counsel Exhibit Number 13 Received into Evidence)**

14 MS. CACACCIO: Your Honor, I'd like a five-minute recess.

15 JUDGE ROSAS: Off the record.

16 (Off the record at 3:13 p.m.)

17 MS. CACACCIO: The General Counsel has located a petition
18 that -- the one I was just talking about, 12, but with the date
19 filed and the case number on the top. It was actually emailed
20 to Respondent's Counsel, with respect to that particular issue.

21 I would consider substituting that with this one, if
22 that's amenable to everybody. If you wanted to, the email that
23 you guys received, I'm happy to show you that too, out of the
24 case file.

25 JUDGE ROSAS: We're going to get it at some point, right?

1 MS. CACACCIO: It's coming right now. It's on its way.

2 JUDGE ROSAS: Okay. So that's going to be General
3 Counsel's 12?

4 MS. CACACCIO: 12.

5 MS. STANLEY: Right.

6 MS. CACACCIO: Correct.

7 JUDGE ROSAS: This will be pulled, right?

8 MS. CACACCIO: Yes.

9 MS. STANLEY: Yeah.

10 JUDGE ROSAS: Okay. Is this part of a critical path, or
11 do --

12 MS. CACACCIO: Yes.

13 JUDGE ROSAS: -- can we just continue?

14 MS. CACACCIO: Oh. She'll be here in just a minute.

15 JUDGE ROSAS: Okay.

16 MS. CACACCIO: But we can -- I mean, we can continue. I
17 mean, the problem is it's part of the series of the stores'
18 issues so it's up to you, Judge.

19 JUDGE ROSAS: It's more of the same, I mean, you know, so
20 --

21 MS. CACACCIO: Right.

22 JUDGE ROSAS: I mean, we can always go back.

23 MS. CACACCIO: Yes, Judge.

24 JUDGE ROSAS: Right?

25 MS. CACACCIO: Yes, Judge.

1 JUDGE ROSAS: Okay. Now, the question is --

2 MS. CACACCIO: I'll go get Michelle.

3 JUDGE ROSAS: Let's go off the record, yes.

4 (Off the record at 3:24 p.m.)

5 **RESUMED DIRECT EXAMINATION**

6 Q BY MS. CACACCIO: Michelle, we're going to go back to
7 General Counsel's Exhibit 12 in a minute.

8 MS. CACACCIO: Your Honor, was Exhibit 13 -- was accepted,
9 yes?

10 JUDGE ROSAS: Correct.

11 MS. CACACCIO: Okay.

12 BY MS. CACACCIO:

13 Q Do you know whether the Walden and Anderson store ever
14 refiled?

15 A The Walden Anderson store did refile, yes.

16 Q Do you know about when that was?

17 A The first or second week in November.

18 Q If I showed you a copy of that petition, would you
19 recognize it?

20 A Yes, I would.

21 MS. CACACCIO: I'm showing the witness General Counsel's
22 Exhibit 14.

23 BY MS. CACACCIO:

24 Q What's General Counsel's Exhibit 14?

25 A It is the refileing of a new petition for the Walden and

1 Anderson location.

2 MS. CACACCIO: Your Honor, I now offer General Counsel
3 Exhibit 14 into evidence.

4 **VOIR DIRE EXAMINATION**

5 Q BY MS. POLITO: Ms. Eisen, did you prepare Exhibit 14?

6 A No, I did not.

7 Q And do you know that it's the petition only by reading it
8 today in court?

9 A I mean, I've seen the petition before. But do I know that
10 it's the petition for Walden and Anderson? Yes, I do.

11 Q Were you involved in the preparation of the petition?

12 A I was not.

13 Q How have you seen it before?

14 A These are sent in the emails, generally once the petitions
15 are filed for stores in Buffalo.

16 Q And who is the subject of those emails?

17 A Members of the organizing committee.

18 Q So you're testifying you're the member of the organizing
19 committee that you received a copy of the petition after it was
20 filed?

21 A I believe I did, yes.

22 Q And you received that via email?

23 A Yes. I believe so.

24 Q And was that from Mr. Haynes?

25 A Correct.

1 Q But you otherwise had no involvement in the preparation of
2 the actual Exhibit Number 14. Is that correct?

3 A That is correct.

4 Q Who are the other members of the organizing committee?

5 A Do you want me to list all of them by name?

6

7 Q Please.

8 A There's well over a hundred and -- plus members.

9 Q Okay. So maybe not. But does --

10 A I don't have all of them memorized.

11 Q -- the email that you referenced include all of those
12 individuals?

13 A No, it did not include all of the individuals.

14 Q Okay. So the email that you referenced where you received
15 a copy of this -- our petition, who would be on those emails?

16 A I don't know all of them, but I can name some of them, I
17 believe, for you.

18 Q Why would it be different than the organizing committee of
19 more than 100 people that you just referenced?

20 MR. HAYES: Your Honor, I object to this. I know you're
21 being, you know, very liberal in these voir dire questions.
22 This is just so far beyond what's necessary to authenticate
23 this document.

24 MS. POLITO: That's because --

25 JUDGE ROSAS: Where are you going with this?

1 MS. POLITO: She can't authenticate -- the whole point is
2 she can't authenticate it. She didn't prepare it.

3 MS. CACACCIO: Your Honor --

4 MS. POLITO: She's only been handed it. Let me finish,
5 please.

6 They decided to introduce these documents through this
7 witness who has no proper authentication for any of these
8 documents, quite frankly. All she's saying is, I reviewed it
9 and I received it by copy of an email.

10 MS. CACACCIO: Your Honor --

11 MS. POLITO: That's what she's saying.

12 MS. CACACCIO: If I might be heard? That's all she needs
13 to say. These are public records, and some of them -- they're
14 self-authenticating. So she doesn't need to say anything other
15 than that. And if Respondents willing to stipulate them in,
16 I'm happy to do that, too.

17 JUDGE ROSAS: Counsel, you know, when I hear this kind of
18 testimony, you have to imagine, in the context of business
19 records, for example, and, you know, we validate those under
20 Federal Rule 803(6), you know, often times, they're referred
21 to -- gotten through -- in through witnesses who did not
22 generate them, but who know that it's a document that is
23 maintained in the regular course of business of that entity.

24 And so we're dealing with a labor organization here,
25 essentially, that this witness is a part of, she's explained,

1 as I hear it. And she's getting these documents in the
2 ordinary course of her duties for that organization, regardless
3 of the fact that, you know, they're public records.

4 I mean, if we want to put them in through public record,
5 you can just ask me to take administrative notice of all of
6 them, and, you know, and -- easily enough. But we're
7 belaboring this a little too much, I think.

8 MS. CACACCIO: Judge, I'm happy to do that.

9 JUDGE ROSAS: Counsel, Counsel. So let me just make a
10 procedural point so we know where I'm coming from. And that is
11 that a labor organization, like a business, has and maintains
12 records. And I have to evaluate these things on that kind of a
13 standard.

14 And again, you know, if you look at the commentators under
15 803(6), you know, it's one thing to receive something, but it's
16 another thing if you want to go after it to undercut the
17 weight, if any, that it should be given, based on the admission
18 through a particular witness. That is your prerogative.

19 But I'm going to overrule the objection, and I'm going to
20 receive it.

21 **(General Counsel Exhibit Number 14 Received into Evidence)**

22 MS. CACACCIO: Your Honor, I'm going to offer General
23 Counsel's Exhibits 14 through 24.

24 JUDGE ROSAS: Okay. All right, let's go off the record.

25 (Off the record at 3:30 p.m.)

1 JUDGE ROSAS: All right. Do you want to show Counsel what
2 you've got?

3 MS. CACACCIO: Yes, Judge. I'm trying to label them all.

4 JUDGE ROSAS: Oh.

5 MS. CACACCIO: Your Honor, I'm going to pass out a
6 substituted General Counsel's Exhibit 12. It's two pages,
7 front and back. It does have a case number and date filed on
8 the top right.

9 MS. STANLEY: It would be front and back.

10 MS. CACACCIO: One page, front and back, sorry. It's two
11 pages total, one front and back.

12 MS. STANLEY: You just need a second?

13 MS. CACACCIO: Yeah. Sorry. I'm trying to label them.
14 Can you -- thank you.

15 JUDGE ROSAS: You gave her 12? You gave her the other --

16 MS. STANLEY: Yeah.

17 MS. CACACCIO: Can you just take away the first one?

18 MS. STANLEY: Here. I'll take the -- oh. There it is.

19 MS. CACACCIO: Did you get one yet? Does everybody have
20 one? You got one, right?

21 THE COURT REPORTER: I should have.

22 MS. CACACCIO: You got a 12, right?

23 THE COURT REPORTER: Yeah, I got 12.

24 MS. CACACCIO: Yeah. He has one. Thank you.

25 JUDGE ROSAS: Okay. So we're on the record.

1 Respondent, any objection to 12?

2 MS. CACACCIO: Your Honor, I'm offering General Counsel's
3 Exhibits 12 and 14 through 24, as public record documents.

4 MS. POLITO: No objection, Your Honor.

5 JUDGE ROSAS: General Counsel's 12 and 14 through 24 are
6 received.

7 **(General Counsel Exhibit Numbers 12 and 14 through 24 Received**
8 **into Evidence)**

9 **RESUMED DIRECT EXAMINATION**

10 Q BY MS. CACACCIO: Michelle, what were the results of the
11 second Walden and Anderson petition?

12 A Not determinative, I believe, I would respond.

13 Q And what were the results of the Williamsville Place
14 election?

15 A Also not determinative.

16 Q What about the East Robinson election?

17 A I believe their objection (indiscernible) is not
18 determinative.

19 Q After that letter went out, the one from August 23rd, did
20 you notice Respondent making any changes?

21 MS. POLITO: I'm just going to object to Counsel saying
22 that the letter went out on August 23rd because there is
23 nothing in the record that indicates that the letter went out
24 on August 23rd.

25 MS. CACACCIO: Your Honor, if I might be heard, the



1 witness actually testified to that.

2 JUDGE ROSAS: Overruled.

3 THE WITNESS: After the letter to (indiscernible) was --
4 went out or made public on August 23rd, changes -- I mean, are
5 we talking about changes to the store?

6 BY MS. CACACCIO:

7 Q What was the first change you noticed?

8 A The first change I noticed was the district manager being
9 ever-present in the store, and I had previously not seen them.

10 Q And what's the district manager's name?

11 A David LeFrois.

12 Q And do you know how long he had been the district manager?

13 A He had been the district manager of Elmwood since, I
14 believe, May or June of 2022 -- 2020, I'm sorry.

15 Q And you said that he was present in the store. When did
16 he visit?

17 A The first time I saw him after the letter went out was
18 that Thursday. So I believe that would be the 26th of August.

19 Q And how often did he come into your store before the
20 campaign?

21 A I can only remember seeing him once in the store prior to
22 the campaign.

23 Q And what about after the letter went out?

24 A After the letter went out, he was there almost daily.

25 Q And when he visited on the 26th, what did he do?



1 A He set up a computer in the lobby at one of the tables.
2 He was very much on his computer and on his phone the entire
3 time.

4 Q And what did he do during his other visits to the store?

5 A The same.

6 Q Do you know if he still works for Starbucks?

7 A He does not.

8 Q Do you know when he left Starbucks?

9 A Mid -- I believe early to mid-September of 2021.

10 Q And how did you learn that?

11 A Initially, I learned it through a text message from
12 another partner who had overheard a store manager mention that
13 he was no longer with the company. And then I believe the next
14 day, a letter was posted to the partner hub, which was then
15 printed out and put on a back-room fridge in the Elmwood
16 location.

17 Q Did you see the letter on the fridge?

18 A I did.

19 Q And if I showed you a copy of that letter, could you
20 identify it for us?

21 A Yes, I could.

22 Q Michelle, I'm showing you General Counsel Exhibit 25.
23 Take a look at it. What's this document?

24 A This is -- these are images of the letter that I was
25 referencing.

1 Q And is it in the same or similar circumstance -- is it the
2 same -- in the same condition as to when you saw it?

3 A It is, yes.

4 MS. CACACCIO: Your Honor, I'd offer General Counsel
5 Exhibit 25.

6 **VOIR DIRE EXAMINATION**

7 Q BY MS. POLITO: Ms. Eisen, how do you know that this
8 letter is the same that you saw posted at your Elmwood store
9 after Mr. LeFrois was departed from Starbucks?

10 A Because it's same letter that I read that was posted.

11 Q It's just based on recollection, then?

12 A Correct.

13 Q Do you know how long the posting was at the store?

14 A How long it was on the back fridge?

15 Q Yeah.

16 A Probably a few weeks. They generally tend to stay up for
17 quite some time.

18 Q It's dated 9/9/21. So does that mean Mr. LeFrois had left
19 before 9/9/21?

20 A I don't know when his official re -- resignation date
21 would have been. I know that I heard about it through a text
22 message the day before I found this letter -- the day before
23 this letter was posted.

24 MS. POLITO: So Judge, I'm just going to object to the
25 extent that what I heard the testify was that the letter was

1 posted after Mr. LeFrois was terminated, but that Mr. LeFrois
2 continued to work for some period of time. So the letter
3 itself is dated September 9th, 2021. So I don't -- I'm
4 objecting to the testimony tying the letter to Mr. LeFrois'
5 termination. Because I -- I think that there was an inaccuracy
6 about that.

7 MS. CACACCIO: Your Honor, that doesn't have anything to
8 do with the admissibility of this particular document which I'm
9 offering at this time.

10 JUDGE ROSAS: Well, Counsel, you're partly correct. To
11 the extent that the offer for Court to tie in an individual's
12 departure from the company, that remains to be seen. There is
13 some testimony from this witness reflecting on that. But
14 otherwise, there's sufficient evidence for the admissibility of
15 this letter, General Counsel's 25, for receipt in evidence.
16 Overruled.

17 **(General Counsel Exhibit Number 25 Received into Evidence)**

18 **RESUMED DIRECT EXAMINATION**

19 Q BY MS. CACACCIO: Michelle, can you look at page 2 of
20 Exhibit 25, three paragraphs up from the bottom?

21 A Yes.

22 Q After reading this letter, what did you learn about Mr.
23 LeFrois?

24 A That he had made the decision to resign from the company.

25 Q Now, you mentioned that Mr. LeFrois was the district

1 manager at the time. Who was your store's manager prior to
2 August 23rd --

3 A Patty --

4 Q -- 2021? Sorry.

5 A That's okay. Patty Shanley.

6 Q Do you know when Ms. Shanley joined the store as the store
7 manager?

8 A August of 2020, I believe.

9 Q And when I say "the store", what store did Ms. Shanley
10 manage?

11 A The Elmwood Avenue location in Buffalo.

12 Q And prior to August 23rd, how often was she in the store?

13 A Often. She was a very attentive store manager.

14 Q What did she do when she was there?

15 A It depended on the day. She was either floor coverage,
16 which meant that she was on the floor with us serving customers
17 in a number of particular roles, or it could have been an -- an
18 admin day, when she was doing payroll, or scheduling, or on
19 conference calls, or placing orders.

20 Q And after the campaign -- sorry, after August 2020 --
21 sorry, after -- struggle. After August 23rd, 2021, how often
22 was she in the store?

23 A As often as she had been prior to that.

24 Q And what did she do in the store after August 23rd, 2021?

25 A The same responsibilities. She was either floor coverage,

1 or she was doing admin, which was placing orders, writing
2 schedules, on different conference calls.

3 (Counsel confer)

4 Q BY MS. CACACCIO: After August 23rd, 2021, who did the
5 scheduling in your store?

6 A Up until a point, probably mid-September, it would have
7 still been Patty, to the best of my knowledge.

8 Q What happened then?

9 A Once we received the support managers into the store, it
10 became either one of their responsibilities, or they were doing
11 it together with Patty.

12 Q How do you know that?

13 A Because I saw them on the back computer doing them.

14 Q And did your schedule change at all at that point?

15 A My schedule did not.

16 Q And what about those you were working with?

17 MS. POLITO: Object. Hearsay.

18 MS. CACACCIO: Your Honor, it's based on her direct
19 observations.

20 JUDGE ROSAS: Repeat the question.

21 MS. CACACCIO: I asked what happened to the people she was
22 working with at that time, how they were scheduled, what she
23 saw about that.

24 JUDGE ROSAS: What she saw. Overruled.

25 A The people I was scheduled with on a daily basis did



1 change.

2 Q BY MS. CACACCIO: How?

3 A I found myself scheduled with the exact same people day in
4 and day out. I'm an opener, so I would always work the morning
5 shift. And that could fluctuate based on other partners'
6 availability. But I noticed that I was working with the same
7 group of people day in and day out.

8 Q And why was that a change?

9 MS. POLITO: Object to form. It's hearsay. And she can't
10 answer --

11 JUDGE ROSAS: Rephrase.

12 MS. POLITO: -- why it was changed.

13 JUDGE ROSAS: Rephrase.

14 Q BY MS. CACACCIO: How did that differ from your prior
15 experience?

16 A How did me being scheduled with the same people differ
17 from my prior -- because that's just the way that it was. It
18 was not a block set of people that worked a specific daypart.
19 Some people might have been available Wednesday mornings but
20 weren't available Tuesday mornings, so they would work a
21 Wednesday morning but then a Tuesday night.

22 Q And what partners were you scheduled with that then became
23 the consistent scheduled partners after this?

24 A More often, it was the -- the more local Union supporters.

25 MS. POLITO: Object. I think the que -- object to the

1 answer because it doesn't give me who she's talk -- I don't
2 know who she's talking about. Who are the specifics that she's
3 talking about? What people?

4 MS. CACACCIO: That can be examined on cross-examination,
5 Judge. The witness answered the question.

6 MS. POLITO: Well, then I ask that the answer be stricken
7 from the record.

8 JUDGE ROSAS: I'm going to sustain that. It's a little
9 vague. You're going to need to try to establish some
10 individual names.

11 Q BY MS. CACACCIO: Who'd you work with, Michelle?

12 A I'll try to list them all off, but this is a while. I
13 would be scheduled with Jaz Brisack. I would be scheduled with
14 JP. I would be scheduled with Emily. I would be scheduled
15 with Angela. I'm just trying to go through the list of people
16 from a year ago. I don't know that I can rattle off any more
17 names at this point.

18 Q Do you know JP's full name?

19 A Yes. Jeremy Pasquale.

20 Q And what about Emily?

21 A Emily Hersch.

22 Q And the other ones you named, can you give full names for
23 them?

24 A Jaz Brisack, Angela Dudzik.

25 Q And what, if anything, do you know about the partners'

1 Union support, and how do you know it?

2 A I only know it based on what they told me and on
3 conversations, which was that they were for the Union.

4 Q Were they wearing -- do you remember if -- do you remember
5 if they ever wore any pins to work?

6 A I do not.

7 Q Okay. Other than store managers, do you have -- did you
8 have any other types of managers in the Elmwood store prior to
9 August 23rd, 2021?

10 A No, we did not.

11 Q Is Ms. Shanley still the store manager?

12 A No, she's not.

13 Q Do you know when she left the company?

14 A Mid-May of 2022.

15 Q Who's the store manager now?

16 A Her name is Merley Alameda-Rulon, I believe.

17 Q And how often is Ms. Rulon in the store?

18 A Not as often as Patty was. So I'm only there two days a
19 weeks, so I'm probably not the best judge of -- of how often
20 she's in the store.

21 Q Have you worked any shifts when she's there?

22 A Yes, I have.

23 Q And what does she do when she's there?

24 A She's incredibly undertrained, so not very much. I think
25 she can be in approximately two positions when she's on the

1 floor or at the porch. Other than that, she spends a lot of
2 time in the back room. I don't know what she's doing back
3 there.

4 MS. POLITO: Object to the answer -- the portion of the
5 answer that says that she's undertrained and ask that be
6 stricken from the record. This witness has no personal
7 knowledge as to what the manager's training was.

8 JUDGE ROSAS: I'll sustain to turn "undertrained" --
9 "undertrained"? "Undertrained". And what else?

10 MS. POLITO: That was it, Judge.

11 JUDGE ROSAS: Okay.

12 Q BY MS. CACACCIO: How many positions are there? You said
13 she's able to do two of them.

14 A Can I just count really quick?

15 Q Yeah, sure.

16 A I think seven.

17 Q What two positions does she do?

18 A Point of sale, which is the front register; and warming,
19 which is the oven.

20 Q And what are the other?

21 A Bar 1, bar 2, cold bar, customer support, handoff. I
22 think that's it.

23 Q How difficult is the warming station?

24 A It -- it is not. It's usually where we put brand-new
25 partners who are still getting used to the roles of the store.

1 Q And how difficult is it to be on point of sale?

2 MS. POLITO: Objection to the question. Difficult. I
3 don't know what that means.

4 JUDGE ROSAS: Repeat the question.

5 Q BY MS. CACACCIO: How difficult is it to be on point of
6 sale in your experience?

7 MS. POLITO: Same as --

8 JUDGE ROSAS: I'm going to ask you to rephrase that.

9 Q BY MS. CACACCIO: Have you ever worked point of sale?

10 A Yes, I have.

11 Q What do you do?

12 A Customers come up to the register, giving your order --
13 their order. You punch it into the register, and you cash them
14 out.

15 Q And what about when you're on bar? What do you have to do
16 there?

17 A You're in charge -- depending on which bar placement
18 you're at, you're in charge of the production of all of the
19 beverages that come through that station.

20 Q And in your experience, how does working on point of sale
21 compare to the other positions in the store?

22 A The bar positions, particularly bar 1, are certainly much
23 higher-skilled positions. You have to have memorization of the
24 recipes and all -- and the ability to produce drinks in a -- a
25 pretty quick pace. In my opinion, point of sale, everything is

1 laid out on the computer, so it's a matter of pushing a button.

2 Q You mentioned the support manager. What is a support
3 manager?

4 A I didn't know what a support manager was prior to August
5 23rd, 2021.

6 Q What do you know it to be --

7 MS. POLITO: Objection to the answer as being
8 nonresponsive to the question.

9 A I don't know what it --

10 JUDGE ROSAS: Repeat the question.

11 MS. CACACCIO: I asked her --

12 JUDGE ROSAS: No. Repeat the quest -- repeat your answer.

13 THE WITNESS: That I didn't know what a support manager
14 was prior to August 23rd --

15 JUDGE ROSAS: Overruled.

16 THE WITNESS: -- 2021.

17 JUDGE ROSAS: The answer stays.

18 Q BY MS. CACACCIO: Do you know what it is now?

19 A I'm told that it is a manager that is sent in from a high-
20 performing store in another location to support the store
21 manager at that store that they're sent to.

22 Q And how do you know that?

23 A Because that's what we were told by members of corporate
24 when we asked what a support manager was.

25 Q And what did you view a support manager as?

1 A I viewed a support manager as somebody sent there to
2 interfere with our Union campaign and to overhear conversations
3 going on between partners on the floor.

4 Q And why'd you think that?

5 A Because that's what I witnessed them doing.

6 Q Had any of the stores you'd ever worked in ever had a
7 support manager prior to August 23rd, 2021?

8 A No, they did not.

9 Q Had you ever heard of a support manager prior to August
10 23rd, 2021?

11 A No, I had not.

12 Q And how long had you been with the company?

13 A At that point, about 11 years.

14 Q And what support managers were at the Elmwood store?

15 A We received two by mid-September: Dustin Taylor and Matt
16 LaVoy. We also received another one sometime around December.

17 Q And who was that?

18 A Catherine Posey, I believe was her name.

19 Q And are those the only support managers your store
20 received?

21 A We had a support manager for our support manager when they
22 had to take a vacation. Her first name was Sara, and I -- I
23 actually do not remember her last name.

24 Q When was your store first assigned a support manager?

25 A I don't have an exact date. I think it was mid-September



1 of 2021.

2 Q And why do you think that's when it was?

3 A I remember getting a text message from Jeremy Pasquale,
4 JP, saying, we have a new support manager. His is name is
5 Dustin.

6 Q Do you know where Dustin came from?

7 A He came from a store somewhere in Georgia.

8 Q Do you know what he did in Georgia?

9 A He was the store manager at that store.

10 Q How did he join the store, or what happened there? Do you
11 know?

12 A I was not there his first week or his first day.

13 Q When was the first time you saw him?

14 A It would have been late September of 2021.

15 Q And what did you do when you saw him?

16 A I introduced myself. He introduced himself by name. We
17 were working together that morning pretty closely.

18 Q Did he say anything to you?

19 A He did not.

20 Q When Dustin was there, how often did he work at your
21 store?

22 A He was scheduled full time, I believe, which is
23 approximately 40 for a store manager. It's a salaried
24 position, so it fluctuates a little bit.

25 Q And what did he do when he was there?

1 A It depended on the situation. If Patty was also there, he
2 was generally following her around. I'm not sure what they
3 were doing, helping with orders or scheduling. Usually
4 scheduling I saw him do with her. If Patty wasn't there, then
5 he was on the floor, working with us.

6 Q What does it mean to be "on the floor, working" with you?

7 A On-floor, or floor coverage, would mean that you are in a
8 position that is facilitating and serving customers. That's
9 the most immediate need.

10 Q Does Dustin still work at your store?

11 A He does not.

12 Q Do you know when he left?

13 A Mid to late December, he was transferred to the Camp Road
14 location.

15 Q And how do you know that?

16 A I remember his last day. It was a Sunday. I think I
17 stopped in to get a drink, and he told me it was his last day.

18 Q You mentioned a support manager named Matt. When was the
19 first time you saw him?

20 A Right around the same time that I saw Dustin.

21 Q And what happened that day?

22 A It was, I believe, his first shift, actually. He was on
23 the warming station. He accidentally left a breakfast sandwich
24 in the oven for too long, and it caught on fire and created
25 quite a commotion.

1 Q Does Matt still work at your store?

2 A He does not.

3 Q When did he leave?

4 A He was sent back to his store in Boston mid-December. The
5 16th is ringing a bell.

6 Q You said, "his store in Boston". Do you know what he did
7 in Boston?

8 A He was a store manager.

9 Q Why do you think he left when you said that he did?

10 A He left a big long --

11 MS. POLITO: Object to form. I think the question, why
12 did he -- I'm sorry, can you read back the question?

13 MS. CACACCIO: I don't think they do that.

14 MS. POLITO: Can't do that?

15 THE COURT REPORTER: I can play it back, but it takes a
16 couple minutes.

17 JUDGE ROSAS: Yeah.

18 MS. CACACCIO: I could just ask -- withdraw, and I'll ask
19 again.

20 MS. POLITO: Okay.

21 MS. CACACCIO: It's faster.

22 MS. POLITO: Thank you.

23 Q BY MS. CACACCIO: You told me when he left.

24 A Uh-huh.

25 Q Why do you think you remember why -- when he left?

1 A He -- he wrote a big, long good-bye note on one of our
2 backroom fridges with a chalk marker.

3 Q When Matt was at your store, how often did he work?

4 A He was also scheduled, you know, 40 hours or whatever,
5 full time week for a store manager.

6 Q And what did he do when he was there?

7 A Very similar to Dustin. If Patty was there, he was
8 assigned to follow her around in whatever they were doing. And
9 then if Patty wasn't there, he was floor coverage with us.

10 Q Do you know how their hours were divided, based on your
11 observation?

12 A Based on my observations, they were there to cover all
13 dayparts.

14 Q And what -- when you say, "dayparts", what does that mean?

15 A Typically, a day -- a day would be broken up into three
16 dayparts. You have the opening daypart, the mid daypart, and
17 the closing daypart. And so it doesn't mean that there isn't
18 some overlap. Usually, the mid overlaps the opener, and the --
19 and then the closer overlaps the mid. But they were scheduled
20 so that there was always managerial coverage throughout the
21 day.

22 Q So prior to August 23rd, 2021, in your observations, was
23 there always a manager in the store?

24 A No. There could not be.

25 Q Why not?

1 A Because there's only one store manager. So they could not
2 have all dayparts covered seven days a week.

3 Q You mentioned someone named Catherine. What was her role?

4 A She was a support manager that came in. There may have
5 been some overlap between her and Dustin and -- and Matt. But
6 essentially, she came in to replace Dustin and Matt.

7 Q Do you remember about when she came into your store?

8 A Mid-December, I think, before Christmas.

9 Q Why do you think that?

10 A Because she was there for the Christmas holiday, and she
11 covered -- Patty Shanley took a vacation over the Christmas and
12 New Year's holidays, and she was the acting store manager
13 during that period of time.

14 Q Do you know where Catherine came from?

15 A I want to say northern California. Definitely California,
16 I'm just not sure what city.

17 Q And how long did she stay?

18 A I believe she was gone by mid to late January.

19 Q Of what year?

20 A Of 2022.

21 Q And how often was Catherine in the store when she worked
22 at Elmwood?

23 A She was also scheduled, you know, 40 hours or whatever the
24 standard scheduling is for the store manager.

25 Q And what did she do when she was there?

1 A Again, she was assisting Patty with a lot of the
2 managerial duties, or she was floor coverage.

3 Q You also mentioned a manager named Sara. What was her
4 role?

5 A Sara was brought in in the fall, I believe late October,
6 somewhere around there, because either Dustin or Matt -- and I
7 can't remember -- had a scheduled vacation, and she was brought
8 in to cover for their vacation.

9 Q How long was that vacation? Do you remember?

10 A About two weeks, I think.

11 Q And do you remember about when the vacation was?

12 A I believe it was after the Elmwood remodel, which would
13 have put it somewhere mid to late October. But I can't be
14 certain.

15 Q And how long was Sara there?

16 A For the duration of that vacation. And then on occasion,
17 she would -- she would come in and work a shift, as well.

18 Q When Sara was working at Elmwood, how often was she there?

19 A It was the same as Matt or Dustin. It was to cover
20 whatever shifts they weren't available to -- to work.

21 Q And what did she do when she was there?

22 A The same as Matt and Dustin. She was either floor
23 coverage, working alongside myself and my fellow partners on
24 the floor, or she was assisting Patty.

25 Q Do you know where Sara came from?

1 A I think Chicago, but I can't be certain.

2 Q We talked about support managers. Were there ever
3 district managers in your store?

4 A There was a district support manager.

5 Q Do you know who that was?

6 A Her name's Kelly. I do not remember her last name. She's
7 from Minnesota.

8 Q What was Kelly's role prior to -- do you know what Kelly's
9 role was prior to coming to Elmwood?

10 A My understanding is that she was a district manager in --
11 in her district in Minnesota.

12 Q And what interaction, if at all, did she have in the
13 Elmwood store?

14 A She came in as a district manager, so I was told by her
15 that she was there as a support district manager to support the
16 other district managers in Buffalo. So she would meet with
17 them at our store sometimes, or she would meet with Patty and
18 the support managers to discuss how their store was running.

19 Q Does she still work in Buffalo, to the best of your
20 knowledge?

21 A I don't believe so, no.

22 Q Do you know when she left?

23 A I think she lived here until January or February of 2022.

24 Q And what did she do when she was in your store?

25 A She was either meeting with Patty and the support

1 managers, or if some of the other -- the -- the newly appointed
2 intern district managers in -- in the district were there.
3 Sometimes they would get a cafe table. On occasion, she would
4 be on the floor in some appointed position, helping me serve
5 customers.

6 Q Are you familiar with someone -- a manager in your store
7 named Ana?

8 A Ana Gutierrez, I believe.

9 Q And who is that?

10 A I was told she was an operations manager.

11 Q And what was your personal interaction with Ana?

12 A The very first, I believe, was -- was in a listening
13 session on October 20th, I believe was my first interaction.
14 She was present for that. My first interaction with her at
15 Elmwood was the following morning.

16 Q What happened?

17 A She came in, said hello, said that she was -- she was
18 going to be here on the floor to assist us this morning. She
19 placed herself on the outward handoff position, which is on the
20 outside of the -- the bar counter. You're essentially handing
21 drinks to customers if they -- if they're ready. I noticed
22 when she came in that she was wearing bracelet and large rings,
23 and she had her nails painted, which is all against Starbucks
24 dress code. I was upset by that, so I approached my shift
25 supervisor and told him that I was going to ask her about that

1 situation, and I did.

2 Q And what happened? What did she say, if anything?

3 A I told her that these were dress code violations and that
4 they were -- partners at Elmwood, we would have sent them home
5 for that. And she said, oh, okay. And that was the end of the
6 conversation.

7 Q Did she do anything because of what you told her?

8 A She did not.

9 Q Okay. How often was Ana in the store?

10 A Ana and I only had a handful of interactions in the store,
11 so I can't speak to that.

12 Q Okay. Does Ana still work at your store?

13 A She does not.

14 Q Do you know about when she left?

15 A I do not. I'm sorry.

16 Q Okay. Other than the store managers and support managers,
17 did you see any other Starbucks officials in your store after
18 August 23rd, 2021?

19 A I did, yes.

20 Q When was the first time you saw a Starbucks official in
21 your store after August 23rd, 2021?

22 A I believe it was Saturday morning. September 4th sounds
23 familiar. I --

24 Q Were you working that day?

25 A I was not.

1 Q So why were you in your store?

2 A I was on my way to the theater for either a rehearsal or a
3 performance, and I stopped in, as I normally do, to -- to get a
4 drink on my way to the theater.

5 Q And what did you see?

6 A I saw three people, of which I recognized by face as
7 Rossann Williams, Deanna Pusatier, and Allyson Peck.

8 Q What was Rossann doing when you saw her?

9 A Rossann, I believe, was behind the counter.

10 Q And what was Deanna doing?

11 A Deanna was standing by the entrance -- Elmwood has three
12 entrances. She was standing by the patio entrance door.

13 Q And what was Allyson doing?

14 A Allyson was over by the handoff lane.

15 Q And what's Rossann Williams' title, if you know it?

16 A President of Starbucks North America.

17 Q And Deanna Pusatier, what's her title?

18 A She was our -- our newly -- recently appointed regional
19 director.

20 Q And what about Allyson Peck? Do you know her title?

21 A She is the regional vice president.

22 Q And what was happening?

23 A A lot of chaos.

24 Q Why?

25 A It was a busy Saturday morning. Most of them are. We

1 have the Elmwood Farmers Market right there, so generally, it's
2 pretty busy. It was a nice day. So it's just a busy day
3 overall. Deanna was saying hello to customers as they entered
4 the store. I believe Rossann was back there trying to assist
5 with drinks. And then Deanna -- or Allyson was standing at the
6 handoff lane, talking to customers and -- and helping to hand
7 out finished beverages and food.

8 Q Prior to that day, had you ever seen the president of
9 Starbucks North America in any store that you worked?

10 A I did not.

11 Q And what about the regional director? Had you ever seen
12 anyone in that position in any store that you'd worked?

13 A Not in the last five or so years.

14 Q And what about before that?

15 A There's -- there's always been occasions where, you know,
16 maybe we exceeded a sales goal and someone was coming through,
17 and they might have popped in to say hello. But the last time
18 that happened, I think I was still at Transit Commons. So it
19 was a long time ago.

20 Q And what about the regional vice president? Had you ever
21 seen anyone with that title in any store you'd worked prior to
22 August 23rd, 2021?

23 A I had met Allyson when she was -- had just been hired with
24 the company in the spring of 20 -- spring or early summer of
25 2020, we had recently reopened Elmwood, and we had exceeded

1 some sort of goal. And she came in to congratulate us, but
2 that was the only time0147510014658 7876I7 had seen her.

3 Q And what about anyone else in that title? The person
4 before Allyson -- had you ever seen them in your store?

5 A Not that I can recall.

6 Q Now, after this first visit, did you ever see any other
7 corporate officials in your store?

8 A There was a group that came in towards the tail-end of one
9 of my shifts, pretty early on in the campaign. They did not
10 introduce themselves. I was actually on the point of sale, but
11 I didn't realize that they were corporate at first. They came
12 in and ordered, did not present partner numbers with their
13 order.

14 Q What does that -- can you tell us what that means?

15 A Sure. We are all assigned a number -- a partner number
16 when we're hired with the company, and that is how you get your
17 discount when you're coming into the store. So it's very
18 unusual, if you have them, not to utilize that discount. So
19 the assumption -- I just assumed they were regular customers.

20 They then took a seat at a cafe table and were joined by
21 one of the store managers, and that's when I sort of put two
22 and two together that they were probably members of corporate.
23 So a little while later, they reapproached to order something
24 else, and I asked directly if they wanted to use a partner
25 number. And they said, no, they wouldn't be using partner

1 numbers.

2 Q Okay.

3 MS. CACACCIO: Your Honor, I promised that I would tell
4 you when we're about to enter the line of recording. We're
5 about to enter that right now.

6 Q BY MS. CACACCIO: So we talked about the officials and the
7 managers that came to your store. What was the next change you
8 noticed after the union campaign went public?

9 A The next change would have been the listening sessions, as
10 the company called them.

11 Q What, in your understanding, was a listening session?

12 A It was described to us as an opportunity to meet with
13 high-level members of corporate to discuss issues that were
14 happening in our stores.

15 Q And when was the first time you heard about the listening
16 session?

17 A There were two scheduled the Thursday and Friday after we
18 filed our petition at Elmwood. They were held at the Main
19 Street Starbucks location in Williamsville, and there were two
20 times left -- one for Thursday and one for Friday.

21 Q And how -- how did you become aware of it?

22 A My store manager sent me a text message, ask -- telling me
23 about them and asking me if I could attend one of the two
24 meetings.

25 Q And who was your store manager at that time?



1 A Patty Shanley.

2 Q Do you know who was supposed to attend these sessions?

3 A They were open to Star -- all Starbucks partners in the
4 Buffalo market, as far as I know.

5 Q Did you attend those sessions that you just mentioned?

6 A I did not attend either of those.

7 Q And since when -- since the time you first joined the
8 company, had you ever been notified of city-wide listening
9 sessions?

10 A I had not.

11 Q You testified you didn't attend the listening sessions --
12 those -- those first two. Do you -- do you know the dates of
13 those?

14 A It was in September -- 2nd and 3rd, I believe -- Thursday
15 and Friday.

16 Q Did you attend any listening sessions?

17 A After those days? Yes, I did.

18 Q What was the first session you attended?

19 A Friday, September 10th, 2021.

20 Q And how did you learn about that meeting?

21 A I was contacted again by my store manager and told that we
22 had -- there was two listening sessions scheduled for the
23 Elmwood location. They were to take place in a hotel
24 conference room by the airport. And I was asked to make sure
25 that I attended one of those two meetings.

1 Q Do you know who those sessions were for?

2 A Those were for the Elmwood partners. Yeah.

3 Q What time was that meeting -- the meeting you attended --
4 held?

5 A I attended the Friday, September 10th session. I think it
6 was scheduled for 4 p.m. to 5 p.m.

7 Q Would the store usually be open during that time?

8 A Yes, it would.

9 Q Was the store open during that time?

10 A I believe it was, yes.

11 Q And who ran the meeting?

12 A This meeting was run by Rossann Williams, Deanna Pusatier,
13 and Allyson Peck.

14 Q And about how many employees attended the meeting?

15 A I think that particular one was seven or eight of us.

16 Q And how long did it last?

17 A It got off to a late start because they forgot that they
18 scheduled it. And then --

19 Q Why do you -- how do you know that?

20 A Well, no one was there to meet us when we arrived.

21 Eventually, someone came out and realized that we were there
22 and then had to make phone calls to the other corporate members
23 who were across the street at the Genesee location. So they
24 came over and apologized.

25 The person who was supposed to check us in for the COVID

1 log was not there. I think she was off getting something to
2 eat. She was another Starbucks partner. So they had to borrow
3 the thermometer from the hotel reservation desk to temp us in,
4 which was a part of the COVID policy at that point for the
5 company. So I think we started about 15 minutes later than we
6 were supposed to.

7 Q Did you record the meeting?

8 A I did.

9 Q How did you record it?

10 A I used my Apple Watch.

11 Q Did you alter the recording in any way?

12 A I did not.

13 Q If I played you the recording, could you identify it for
14 us?

15 A Yes, I could.

16 MS. CACACCIO: So Your Honor, at this time, we're looking
17 at General Counsel Exhibits 26(a) and 26(b). 26(b) is a
18 transcript for aide in the recording, and I don't know how
19 you'd like me to proceed at this point. I can hook my laptop
20 up to play it for the witness so she can identify it. If you
21 want to go off the record, I can talk to Respondent's counsel
22 about the best way to move forward with these because, like I
23 said, we're going to have a lot -- not just with -- not just
24 this witness, but with many.

25 JUDGE ROSAS: Okay. Off the record.

1 (Off the record at 4:11 p.m.)

2 MS. CACACCIO: So Judge, what I wanted to say with the
3 witness excused is that this is just one of many recordings.
4 There may be close to 40 recordings that we have in this
5 matter. Many of them range about an hour a piece. So for us
6 to do this in the way that we're talking about doing it right
7 now is going to take at least one week's worth of time. So
8 that's why I'm trying to see if there's some kind of better
9 method. I'm happy for voir dire. I'm happy for whatever we
10 can do to save the Court at least 40 to 50 hours of playing
11 recordings.

12 JUDGE ROSAS: Well, you indicated that you were going to
13 have to go to certain parts of these recordings in order to
14 identify individuals.

15 MS. CACACCIO: So this is what I was suggesting earlier,
16 Judge -- that if we were able to, with Respondent, be able to
17 identify speakers, we wouldn't have to do that necessarily with
18 the witness, as long as she's able to identify the recordings,
19 Judge. We can make stipulations. We could go off the record.
20 I mean, I think we have choices other than listening to 40 to
21 50 hours of recordings of these meetings.

22 JUDGE ROSAS: That's not practical --

23 MS. CACACCIO: Okay.

24 JUDGE ROSAS: -- for sure. So -- okay. Is that why you
25 wanted her excused?

1 MS. CACACCIO: Yeah, but I mean, the number of recordings
2 we have the length of this one, I just didn't want to take the
3 testimony at all with talking about other people's recordings
4 and other -- you know.

5 JUDGE ROSAS: So she can --

6 MS. CACACCIO: Okay.

7 JUDGE ROSAS: It -- it sounds like she can come back here.
8 I mean --

9 MS. CACACCIO: Okay, sure.

10 JUDGE ROSAS: -- when she comes back --

11 MS. CACACCIO: Sure.

12 JUDGE ROSAS: Let's -- let's wait until the witness comes
13 back and --

14 MS. CACACCIO: Sure.

15 JUDGE ROSAS: Well, do we want to argue this outside her
16 presence?

17 MS. CACACCIO: We could.

18 JUDGE ROSAS: Do you care?

19 MS. POLITO: It's up to you, Your Honor. I would like --

20 JUDGE ROSAS: I don't, you know --

21 MS. POLITO: -- to have my objections on the record.

22 JUDGE ROSAS: -- I can't see any -- any fallback on this.

23 MS. CACACCIO: Sure. I'll bring her back, Judge.

24 JUDGE ROSAS: One way or the other.

25 (Off the record at 4:18 p.m.)

1 JUDGE ROSAS: And we're dealing with one offered audio
2 recording at this time.

3 MS. CACACCIO: Yes, Judge.

4 JUDGE ROSAS: And -- and you've -- you've designated that
5 as General Counsel's 26(b)?

6 MS. CACACCIO: 26(a) is the recording. 26(b) is the
7 transcript, Judge.

8 JUDGE ROSAS: Okay. Okay. So we've discussed this off
9 the record -- the -- the procedure of playing it for the
10 witness, in an effort to have her authenticate it and -- or
11 clarify aspects of the recording and to authenticate it, right?

12 So Respondent, you have an objection --

13 MS. POLITO: Yes, Your Honor.

14 JUDGE ROSAS: -- before we've even asked, right?

15 MS. POLITO: That's correct, Your Honor.

16 JUDGE ROSAS: Go ahead.

17 MS. POLITO: Your Honor has the authority to exclude
18 evidence, including, but not limited to, electronically stored
19 information such as audio and video recordings that are not
20 authenticated. Federal Rules of Evidence 901(a) requires that,
21 for the evidence to be authenticated, the proponent must
22 produce evidence sufficient to support a finding that the item
23 is what the proponent claims it is, before it is received into
24 evidence.

25 Examples of evidence that satisfy the requirements are

1 testimony of a witness with knowledge, distinctive
2 characteristics, and opinion about a voice. We've already
3 heard that there are voices on this audio recording that the
4 witness cannot authenticate. So that's one of the reasons why
5 these audio recordings should not be introduced into evidence.

6 MS. CACACCIO: Your --

7 MS. POLITO: Moreover, Judge, there are multiple audio
8 recordings that General Counsel has indicated that she would be
9 submitting. We have no indication how they were created, why
10 they were created, whether or not they are originals, copies,
11 or they may have been truncated or altered, whether they are
12 the complete recordings of the specific event that we're
13 referring to. So the testimony, as set forth, lacks proper
14 foundation for admission.

15 Moreover, Judge, it's cumulative and duplicative. The
16 witness testified that she was at this listening session.
17 There's no reason why she can't testify as to what she heard
18 and recalls from the listening session. So an audio recording
19 that lacks proper foundation, and for which no one can testify
20 as to who the voices are, is completely inappropriate and
21 should not be admitted into evidence.

22 MS. CACACCIO: Your Honor, if I might be heard?

23 This witness didn't say she could identify the voices.
24 That never happened. Second of all, until we play the
25 recording, we can't -- all these -- all of Respondent's

1 objections are untimely at this point. This witness has
2 already testified it's her recording. She testified when she
3 made it. The recording itself is the best evidence of what
4 happened in that meeting, and we have it. So that's the
5 evidence that should be used.

6 MS. POLITO: Your Honor, just so that we're clear, the
7 exhibit that I have actually has unidentified speakers right in
8 the transcript. So --

9 MS. CACACCIO: Right. And Your Honor --

10 MS. POLITO: -- I don't know how we could listen to a
11 recording or a transcript where clearly there's unidentified
12 speakers.

13 MS. CACACCIO: Your Honor, can I be heard?

14 JUDGE ROSAS: No, not yet.

15 MS. CACACCIO: Okay.

16 JUDGE ROSAS: So just a reminder to everyone that
17 everybody gets their chance when the other one finishes. Okay?

18 MS. CACACCIO: Yes, Judge.

19 JUDGE ROSAS: Okay. I won't say it's the last word unless
20 it's obviously clear. You'll all get your chance.

21 Go ahead.

22 MS. CACACCIO: This witness didn't make the transcript,
23 and we never purported that she did. This transcript was made
24 by the transcription recording service. If the transcription
25 recording service wasn't able to identify the speaker, that's a

1 separate problem from whether this witness could identify the
2 speaker, which is why I offered to Respondent to make
3 stipulations about the speaker so we can save time here, but
4 that doesn't seem to be -- they're not -- didn't seem to be
5 interested in that. So I'm having to have this witness do it
6 because she was there, and she can testify to it.

7 MS. POLITO: Your Honor, if I may, asking me as an
8 attorney to listen to a recording and make some representation
9 who spoke is wholly improper. So I'm not trying to be
10 difficult, and -- and the insinuation is -- I know it's getting
11 late in the day, but it's a wholly improper request to ask me
12 to authenticate a voice of someone that I may or may not have
13 ever heard before, number 1.

14 Number 2, the fact that the transcript was issued by a
15 third party, and we have no knowledge, and there's been no
16 foundation laid, as to how that transcriber got the recording,
17 was it a complete recording, was it -- did it contain the whole
18 record, and how they transcribed it -- is also wholly improper
19 for foundational purposes. And the audio recording and the
20 transcription should not be entered into evidence.

21 JUDGE ROSAS: Well, --

22 MS. CACACCIO: May I be heard?

23 JUDGE ROSAS: Not yet. Let me just -- let me just tell
24 you what my interim thoughts are right now, as you all are
25 talking about the transcript versus the audio. It -- it sounds

1 like the transcript is a -- is a best effort on the part of
2 someone to transcribe what is uttered in General Counsel's
3 26(a) for identification. So whether General Counsel's 26(b)
4 is received in evidence or not remains to be seen.

5 I want to remind counsel that we -- we have instances in
6 which, in litigation, oftentimes, in order to assist the fact
7 finder, parties come up with data compilations, as an
8 analogy -- okay -- that, in and of themselves, are not regular
9 business records, were not contemporaneously created at the
10 time of a transaction or an event. But oftentimes, the finder
11 of fact will receive those documents in evidence as an aide,
12 keeping in mind that the -- the evidence that's chief is the
13 underlying, the base, the -- the -- the original evidence,
14 which in this case is the audio.

15 So let's -- let's kind of put, you know -- and I'm
16 referring to Federal Rule of Evidence -- I believe it's 10 --
17 1006, okay? That's been used in a lot of respects by parties
18 in these litigations. But put that on the side. The -- the
19 main issue right now is 26(a) -- is the audio recording and
20 what the General Counsel has indicated is -- is a rerun on --
21 on -- on many occasions, if we can't figure out some
22 streamlined way to -- to address this.

23 You know, if it -- if we have to play every audio in the
24 hearing -- and they're not going to be transcribed. They're
25 not going to be transcribed. But -- but they've got to be

1 listened to by me when -- when I deliberate on this case, on
2 the record. If -- if a USB or a CD is uploaded electronically,
3 and -- and you know, and it -- it's received in evidence as --
4 you know, as evidence of the -- of a -- of a -- of a recording,
5 I'm going to have to make do with what I'm listening to when --
6 when I deliberate. So either I listen to it now, or I listen
7 to it later.

8 Now, you know, what we can do is we can, if we want -- and
9 it's just something to consider -- we can address the -- the
10 underpinnings, the -- the -- the creation, the authenticity of
11 what is purported to be audio recordings. Okay? I don't know
12 if, you know, the parties are interested in figuring out a way
13 so that especially the Respondent is -- feels assured that it
14 is what the witness purports it to be. But those are just some
15 thoughts. Any -- any -- any response to that?

16 MS. POLITO: Well, Judge, I mean, I suppose I can
17 certainly voir dire the witness a little bit about her
18 recording of this particular listening session. But my same
19 objection stands. If -- and we're entitled to hear the whole
20 recording as well. If it's -- if it's --

21 JUDGE ROSAS: You're entitled --

22 MS. POLITO: Right.

23 JUDGE ROSAS: Let me interrupt you, Counsel. I forgot to
24 also --

25 MS. POLITO: Yes.

1 JUDGE ROSAS: -- throw in --

2 MS. POLITO: Yep.

3 JUDGE ROSAS: -- the fact that not -- not only are you
4 entitled; you have to listen -- you have to know what it is,
5 and you're entitled to establish the circumstances regarding,
6 you know, what it purports to represent.

7 However, the point that we've already heard from her in
8 this -- in this scenario is not the best evidence. If there is
9 evidence that exists -- you know, you can argue conversely that
10 her testimony about what tran -- what transpired technically
11 could, you know, be stricken in place of the actual audio. So
12 to the -- except to the extent that it just provides a general
13 parameter of what transpired and maybe could clarify what's in
14 the audio, where maybe there are some questions.

15 But anyway, go ahead.

16 MS. CACACCIO: Your Honor --

17 MS. POLITO: I --

18 MS. CACACCIO: Sorry. May I be heard?

19 JUDGE ROSAS: No. I want to hear from her.

20 MS. POLITO: There still is nothing in the record that
21 indicates any proper authentication or foundation for the audio
22 recording and/or the transcript. And starting with the audio
23 recording, there is no indication, other than the witness
24 saying that she went to a session, recorded something on her
25 Apple Watch, and that's it. There's no authentication. We

1 don't have the original recording. We have no indication of
2 the -- the metadata which said when it was recorded, how long
3 it was recorded. We don't have any of that information.

4 We have no information as to when it went to a
5 transcriber, who -- who transcribed it. I think the -- someone
6 from the Board may have transcribed it. I'm -- I don't know
7 who the transcriber is. eScribers -- it looks like eScribers
8 transcribed it. I don't have any of that information.

9 Yes, General Counsel did provide me with a copy of the
10 audio recording, and she provided me with a copy of the
11 transcript. It's evident from the transcript that there are
12 people speaking at this listening session that apparently no
13 one in this room knows who those people were.

14 So I don't know how it would be properly authenticated or
15 how the foundation could possibly be laid to allow that and
16 introduce that into evidence, when the witness is here, and she
17 can testify as to what she heard at that listening session,
18 what she walked away from, just as she did for the last two
19 hours about her observations about what happened at this
20 particular event.

21 JUDGE ROSAS: Counsel, did you subpoena this material?

22 MS. POLITO: We have issued a subpoena on the Board, yes.

23 JUDGE ROSAS: On the Board or on this witness?

24 MS. POLITO: We have not yet issued any individual
25 subpoenas on this particular witness, no.

1 JUDGE ROSAS: Okay. So on this particular point, for
2 example, you haven't subpoenaed the material, the -- the -- the
3 supporting material that you're addressing, that you're going
4 to inquire about on voir dire now.

5 Before she goes into voir dire, is there anything else you
6 want to ask the witness?

7 MS. CACACCIO: I would like to make argument on the
8 record, Judge. Can I do that?

9 JUDGE ROSAS: Go ahead. Go ahead.

10 MS. CACACCIO: Your Honor, the transcription isn't being
11 offered as evidence. It wasn't made by this witness. It was
12 made by this office in an effort to aid in the testimony. It's
13 just a testimonial aide. This --

14 JUDGE ROSAS: Right.

15 MS. CACACCIO: -- transcription is not evidence.
16 Moreover, this witness has already testified that she can talk
17 about -- and I think it's asked again, but she already
18 testified that she can identify the voices on the record. And
19 when I asked Respondent to perhaps consider stipulations, I
20 didn't expect Ms. Polito herself to be able to identify the
21 voices. I expected her client to be able to help her and aid
22 her in doing so, so that we could perhaps streamline some of
23 the testimony.

24 So this witness is more than qualified to testify to her
25 own recording. She already testified how she made it. She

1 already testified when she made it. She testified generally
2 who was there. She's sufficiently authenticated this record
3 for me to be able to play it out loud. I'm not even offering
4 it at this time.

5 JUDGE ROSAS: Okay. All right. Voir dire? Before I
6 rule?

7 MS. POLITO: Thank you, Your Honor.

8 **VOIR DIRE EXAMINATION**

9 Q BY MS. POLITO: Ms. Eisen, you've indicated to us that you
10 have recorded a listening session from September 10th. Is that
11 correct?

12 A That's correct.

13 Q And you recorded that listening session on your Apple
14 Watch?

15 A I did.

16 Q And why did you record that session?

17 MS. CACACCIO: Objection. Relevance. And it's --

18 JUDGE ROSAS: Overruled.

19 You can answer.

20 A Because I wanted a record of what was being said.

21 Q BY MS. POLITO: Okay. And when did you start the
22 recording on September 10th?

23 A I believe as we were entering the conference room.

24 Q What time was that?

25 A Sometime between 4:15 and 4:20, I think.

1 Q Do you know the exact time that you started the recording?

2 A I don't know the exact time.

3 Q And the conference room was located where?

4 A The conference room was located in a hotel near the
5 airport. I think it was the Courtyard Marriott.

6 Q How many people were present when you started the
7 recording?

8 MS. CACACCIO: Objection, Your Honor. This doesn't go to
9 the credibility of the recording, and if we play the recording,
10 we'll know exactly how many people were there.

11 JUDGE ROSAS: What's the relevance?

12 MS. POLITO: It goes to the foundation. I -- I don't
13 know -- she just told me she doesn't know what time she started
14 the recording.

15 So perhaps if I know how many people were there when she
16 started it, that's going to help us to figure out when the
17 recording started.

18 JUDGE ROSAS: Okay. Overruled.

19 You can answer if you know.

20 A I believe there were three members of corporate, myself,
21 and seven other partners, approximately.

22 Q BY MS. POLITO: And when you -- you testified that, when
23 you walked into the conference room, you started the recording
24 on your watch?

25 A I started it on my watch, yes.

1 Q And you know for a fact the recording started?

2 A I -- I do know that it started.

3 Q And when did you stop the recording on your watch?

4 A I stopped it as -- as we were leaving the meeting.

5 There might have been some that -- some conversation that
6 took place in the lobby afterwards.

7 Q Did the conversations in the conference room that you were
8 in end before you stopped your watch?

9 A No.

10 Q So there were still conversations occurring in the
11 conference room when you stopped your watch, your audio
12 recording?

13 A Can you rephrase that? I'm sorry.

14 Q Sure. You told me that you stopped the recording --

15 A Um-hum.

16 Q -- when you were in the conference room.

17 A No. I stopped the recording when I was in the lobby.

18 Q Okay. So when you -- was the meeting in the conference
19 room complete and done when you entered -- entered -- left the
20 conference room and went into the lobby?

21 A It was, yes.

22 Q So the speakers were done talking?

23 A They were.

24 Q And then you went into the lobby, and that's when you
25 stopped your watch?

1 A Yes.

2 Q And then what did you do with the recording after you
3 stopped your watch?

4 A The way that it works on the Apple Watch is it
5 automatically transfers it over to your phone.

6 So I checked later that night to see if it had transferred
7 over to my phone, and it had. And then, the following day, I
8 emailed it to Richard Bensinger, I believe.

9 Q Why did you email it to Richard Bensinger?

10 MS. CACACCIO: Objection. Relevance.

11 This doesn't have to do anything with the recording or the
12 authenticity of it.

13 MS. POLITO: It's --

14 JUDGE ROSAS: I'll allow that. Overruled.

15 You can answer.

16 A He was helping with our organizing, and I wanted him to be
17 able to hear what was said.

18 Q BY MS. POLITO: What happened to the recording after you
19 gave it to Mr. Bensinger?

20 A To the best of my knowledge, it was sent over to our
21 attorney, Ian Hayes.

22 Q But you don't know that for a fact, right?

23 A I don't know that for a fact.

24 Q And you don't know what Mr. Bensinger did to it, correct?

25 A I don't.

1 Q You don't know if he altered it, shortened it, or modified
2 it in any way, correct?

3 A All I can tell you -- I don't. All I can tell you is that
4 the one I heard is the same as the one that I sent to him.

5 Q When you sent the recording to Mr. Bensinger, did you
6 delete it from your phone?

7 A I did not.

8 Q Do you still have it on your phone?

9 A Yes, I do.

10 Q Did you give it to anyone else, other than Mr. Bensinger?

11 A I don't believe there was anyone else on that email.
12 There's a possibility that Jaz Brisack was also on that email,
13 but I can -- I'd have to check.

14 MS. POLITO: So Judge, based on the witness' testimony, if
15 the Court's inclined to allow the recording, I think that her
16 original recording, which she testified is on her phone, would
17 be the recording that the Court should consider.

18 MS. CACACCIO: Your Honor -- Your Honor, that's the
19 recording we're going to play. We're going to play --

20 JUDGE ROSAS: So --

21 MS. CACACCIO: -- the recording that Michelle has heard.

22 JUDGE ROSAS: Off the record.

23 (Off the record at 4:37 p.m.)

24 JUDGE ROSAS: All right. So we had an off-the-record
25 discussion relating to the General Counsel's intentions.

1 And that is that there are more audio recordings, in
2 addition to this one, that are going to have to be played in
3 order to identify --

4 MS. CACACCIO: Oh.

5 JUDGE ROSAS: -- certain individuals.

6 MS. CACACCIO: Judge, that's not what I meant. If that's
7 what you understood, that's not what I meant.

8 JUDGE ROSAS: Okay. Tell me --

9 MS. CACACCIO: This -- this recording -- Michelle, in
10 theory, will be able to identify the individual speakers on
11 this recording.

12 We won't need more recordings to identify those speakers.
13 But other recordings will also have speakers on them that will
14 also need to be identified --

15 MS. STANLEY: By the witnesses.

16 MS. CACACCIO: -- by the witnesses.

17 JUDGE ROSAS: That weren't identified on -- on a
18 transcription that was generated --

19 MS. STANLEY: Right.

20 MS. CACACCIO: Right.

21 JUDGE ROSAS: -- of 26(a)?

22 MS. CACACCIO: Right.

23 JUDGE ROSAS: Right. Okay. So at this point, is there
24 anything else the Respondent wants to add?

25 MS. POLITO: I would just like to add for the record that

1 Exhibit 26(b) has unidentified speakers in it, and so the --
2 the objection by Respondent stands. The transcript is unclear.
3 The witness testified that she emailed it to a Richard
4 Bensinger, and she does not know what happened to it after
5 that. So we are -- we are going to be listening to a recording
6 that we don't know if it's been modified by someone, at the
7 same time when she has the original recording still on her
8 phone. So that's my objection for the record, Judge. Thank
9 you.

10 JUDGE ROSAS: Yeah. I mean, I don't know what's going to
11 happen with 26(b), but let's -- let's go ahead and -- I'm going
12 to initially overrule the objection with respect to 26(a).

13 I believe the -- the witness has sufficiently testified,
14 based on her direct examination and in response to cross, that
15 what she heard initially that she supposedly recorded is what
16 she heard again when she heard the recording again.

17 All right. Go ahead.

18 MS. CACACCIO: Judge -- do you know about how long the
19 recording is, Michelle?

20 THE WITNESS: It's going to be approximately an hour,
21 probably a little bit more.

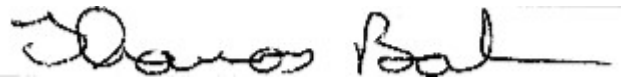
22 MS. CACACCIO: So do you want me to start this recording
23 now, knowing that it won't be finished before we have to leave
24 this room?

25 JUDGE ROSAS: All right. Let's go off the record.

1 (Whereupon, the hearing in the above-entitled matter was
2 recessed at 4:40 p.m. until July 12, 2022 at 9:00 a.m.)
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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 3, Case Number 03-CA-285671, et al., Starbucks Corporation and Workers United, held at the National Labor Relations Board, Region 3, Robert H. Jackson United States Courthouse, Wyoming (5E) Courtroom, 2 Niagara Square, Buffalo, New York 14202, on July 11, 2022, at 1:06 p.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER

Official Reporter